23-6280

No.

IN THE

SUPREME COURT OF THE UNITED STATES

FELIX I. GASPARD - PETITIONER

VS.

BAC HOME LOANS SERVICING, LP, et al - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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ORIGINAL

QUESTIONS PRESENTED

1. Under the U.S and Florida Constitutions, pursuant to applicable rules of law and the various consent decrees the very same "plaintiffs" entered into with 49 States and the Federal Government to resolve the fraud claims brought against them for causing the 2008 foreclosure crisis,
Whether the judiciary has jurisdiction to effectuate the "Taking without due process and without just compensation" of a pro se black disabled senior citizen's homestead property, for no legitimate public purpose but on the behalf of and for the benefit of a still unidentified real party in interest, by means of the same type of fraudulent and vexatious foreclosure action initiated by and through the same "plaintiffs", where the pro se black disabled senior citizen was judicially precluded from asserting his fundamental, legal and constitutional rights to due process, access to the courts, property rights, right to a timely requested trial by jury on his compulsory counterclaim, right to set off, recoupment or redemption; to equal protection under the law, and where the judiciary under the color of law and authority allowed the plaintiffs to commit fraud upon the court with impunity?

2. Under the U.S. and Florida Constitutions, under the applicable Rule of Law,
Whether a State adjudicated totally disabled black person entitled and qualified to have received a $267.00 loan modification have his property judicially TAKEN, under color of law, without due process nor compensation, by means of a void ab initio Final Judgment for violation of his fundamental right to a timely requested jury trial on his compulsory counterclaim, to a debt collector shielded by the courts from disclosing its entitlement to relief even up to now?
Whether another law firm be allowed to obtain a writ of possession against Defendant, when the third party that they claim to represent denies any involvement with them, a third party that did not participate in the proceedings, did not pay cash at auction and received a Conditional Credit Bid Assignment, a nullity by operation of law and when the law firm and the third party have motions for default pending against them for failure to file any responsive papers in the compulsory counterclaim?

3. Under the taking and the due process clauses of the U.S. and Fla. Constitutions; pursuant to F.R. Civ. P., Rules 1.140, 1.170, 1.260 (c), 1.420, 1.540 (b)(3) & (4), Rule 9.110 (b); pursuant to Rule 2.215(f), F. R. Jud. Admin.; to Fla. Stat., sec. 117, 817 and 831; and the applicable rules of law pertaining to a foreclosure action initiated by a self-proclaimed servicer with, to this day, no identified principal or real party in interest to validate an agency relationship, to authorize and ratify this action,

Whether a Defendant's 25-count Amended Compulsory Counterclaim, among them for Fraud and to Quiet Title, with timely jury trial requested, can be dismissed with prejudice, (even to parties that were never served or made an appearance in the case, to parties against whom Administrative Clerk Default were sought for failure to file any responsive papers), on the basis of res judicata, collateral estoppel, merger doctrine, litigation privilege,

- If the defendant's fundamental and constitutional rights were violated by all involved:

- If the predecessor Circuit court, the Honorable Judge Spencer Eig eviscerated defendant's counterclaim and defenses by denying proper discovery and improperly refused to dismiss the September 29, 2010 Foreclosure Complaint for lack of standing, for failing to state a cause of action, for naked fraud for attaching an "Assignment of mortgage...together with the note", already executed September 30, 2010 in violation of F.S. 117 and 831, because he "wanted to first hold the trial and if Defendant could prove the fraud then he would dismiss the case"

- If, accordingly, the 11th Circuit jurisdiction was never properly invoked, the lower court did not have subject matter jurisdiction, thus, rendering all subsequent litigation void ab initio

- If the trial Court, The Honorable Judge Marvin Gillman, against Defendant's strenuous, contemporaneous, and preserved objections, held a 2-day non-jury trial wherein after committing numerous procedural errors, sua sponte and with no mandated test, severed the compulsory counterclaim with jury trial timely requested, in order to enter Final Judgment of Foreclosure for Plaintiff, allowing execution and making no mention of the severed counterclaim nor making any provision to protect Defendant's interest pending the jury trial
- If the courts have refused for 12 years to hold any evidentiary hearings and to rule on the hundreds of pages of documentation submitted to prove fraud, fraud upon the Court, while at the same time denying his motions for lack of evidence.

4. Whether the doctrine of "Absolute Judicial Immunity" has been expanded into "Blanket Judicial Immunity" by affirming that any judge is afforded judicial immunity by "the blanket law, the blanket law that says that claims against any judge are completely, 100 percent barred by absolute judicial immunity. As long as any judge is acting in their judicial capacity, making whatever ruling, whether or not that ruling is something you agree with, or whether the ruling is completely legally wrong, there is absolute judicial immunity... The law in Florida is that judicial acts are entitled to absolute 100 percent judicial immunity", thereby making them above the U.S. and Florida Constitutions?

5. Whether the lower court erred in granting foreclosure relief to non-parties to the case and where the Plaintiff never amended the original Complaint when the Plaintiff was substituted?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

From the **U.S. SUPREME COURT:**

Felix I. Gaspard, Applicant v. BAC Home Loans Servicing, LP. Application 21A598

Felix I. Gaspard, Applicant V. BAC Home Loans, LP Application 21A526

Felix I. Gaspard, Petitioner v. BAC Home Loans Servicing, LP Case # 16-8271

From the **CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA:**

Gaspard v. The Honorable Judge Monica Gordo, **Case # 17-26102-CA.** Judgment entered April 4, 2018.

Gaspard v. The Honorable Judge Rodolfo Ruiz, **Case # 19-15626-CA.** Judgment entered December 2, 2019

From the **FLORIDA SUPREME COURT:**

Gaspard v. BAC Home Loans Servicing, LP, Case # SC16-1950. Disposed on 10/26/2016.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-1469. Disposed of on 8/10/2017.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-1490. Disposed of on 8/11/2017.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-1576. Disposed of on 9/25/2017.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-2109. Disposed of on 12/12/2017.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC17-2254. Disposed of on 12/22/2017.

Gaspard v. The Honorable Judge Rodolfo Ruiz, Case # SC20-1864. Disposed Of on 12/23/2020.

Gaspard v. BAC Home Loans Servicing, LP, Case # SC22-88. Disposed of 01/20/2022.

From the **THIRD DISTRICT COURT OF FLORIDA**

BAC Home Loans Servicing, LP v. Gaspard, Case # 3D13-2124. Disposed of 3/19/2014

Gaspard v. BAC Home Loans servicing, LP, Case # 3D14-1922. Disposed of 11/24/2014

Gaspard v. BAC Home Loans servicing, LP, Case # 3D15-427. Disposed of 06/01/2016

Gaspard v. BAC Home Loans Servicing, LP, Case # 3D16-2616. Disposed of 04/16/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-94. Disposed of 06/23/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-96. Disposed of 05/16/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-1327. Disposed of 08/25/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-1808. Disposed of 08/09/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-2351. Disposed of 11/06/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-2692. Disposed of 12/19/2017

Gaspard v. BAC Home Loans servicing, LP, Case # 3D17-2714. Disposed of 11/07/2018

Gaspard v. BAC Home Loans servicing, LP, Case # 3D19-685. Disposed of 06/05/2019

Gaspard v. The Honorable Judge Rodolfo Ruiz Case # 3D20-14. Disposed of 09/23/2020

Gaspard v. BAC Home Loans servicing, LP, Case # 3D20-1723. Disposed of 10/27/2021

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TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

F. R. Civ. P

Florida Bar

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Felix I. Gaspard, (Gaspard) respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the 3rd DCA, the highest state court to review the merits, appears at Appendix A to the petition.

The July 7, 2022 decision of the 11th Judicial Circuit Court of Florida appears at Appendix B to the petition.

JURISDICTION

The date on which the highest state court decided my case was May 17, 2023. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

1. Petitioner, Felix I. Gaspard, (Gaspard) respectfully requests that the Stand-Alone Statement and Procedural History [App. 81] be accepted as his Statement of the Case. Petitioner seeks review of this constitutionally prohibited Taking without due process and without fair compensation of his homestead property by means of a vexatious prosecution of a void ab initio foreclosure action involving parties [R. 1970-2197, par. 15-43, 276-277, 285-293, 302, 465-576] whose grand scheme to defraud by filing fraudulent actions had already been exposed and sanctioned by the appropriate Federal and State entities as being the culprits for the 2008 foreclosure crisis. See also, the 2/5/2012 New York Times

article on Page BU1: "A Tornado Warning, Unheeded" [App. 53], based on the May 2006 confidential 147-page report known internally as O.C.J. Case No. 5595, (Office of Corporate Justice). It states:

"According to O.C.J. Case No. 5595, Fannie held roughly two million mortgage notes in its offices in Herndon, Va., in 2005 — a fraction of the 15 million loans it actually owned or guaranteed. Who had the rest? Various third parties. At that time, Fannie typically destroyed 40 percent of the notes once the mortgages were paid off. It returned the rest to the respective lenders, only without marking the notes as canceled.

Mr. Lavalle and the internal report raised concerns that Fannie wasn't taking enough care in handling these documents. The company lacked a centralized system for reporting lost notes, for instance. Nor did custodians or loan servicers that held notes on its behalf report missing notes to homeowners. The potential for mayhem, the report said, was serious. Anyone who gains control of a note can, in theory, try to force the borrower to pay it, even if it has already been paid. In such a case, "the borrower would have the expensive and unenviable task of trying to collect from the custodian that was negligent in losing the note, from the servicer that accepted payments, or from others responsible for the predicament," the report stated. Mr. Lavalle suggested that Fannie return the paid notes to borrowers after stamping them "canceled." Impractical, the 2006 report said.

This leaves open the possibility that someone might try to force homeowners to pay the same mortgage twice. Or that loans could be improperly pledged as collateral by some other institution, even though the loans have been paid, Mr. Lavalle said. Indeed, there have been instances in the foreclosure crisis when two different institutions laid claim to the same mortgage note ... Even so, the report didn't conclude that Mr. Lavalle was wrong on the legal issues. It simply said that few people would have the financial resources to challenge foreclosures. In other words, few people would be like Mr. Lavalle.

"Courts are unlikely to unwind foreclosures unless borrowers can demonstrate that the foreclosure would not have gone forward with the correct pleadings, which is a difficult burden for most borrowers to meet," the report said. "Nevertheless, the issues Mr. Lavalle raises should be addressed promptly in order to mitigate the risk of exposure to lawsuits and some degree of liability." Mr. Cymrot declined to comment for this article ...

Now, he hopes dubious mortgage practices will be eradicated.

"Any attorney general, lawyer, bank director, judge, regulator or member of Congress who does not open their eyes to

the abuse, ask pertinent questions and allow proper investigation and discovery," he said, "is only assisting in the concealment of what may be the fraud of our lifetime." [App. 53]

2. BANA's Detailed History Statement [App. 38], the in-depth analysis provided in the Case of JP Morgan Chase Bank N.A. v. Butler, 2013 WL 3359583 (N. Y. Sup.) [App. 143], the hearing transcripts finally added by Order of the 3rd DCA [App. 35; R. 3545-3676], the exhibits [App. 1-54], paint a clear picture of the continuing fraud being perpetrated upon the Court [R. 1970-2197]. Specially, the July 31, 2003, letter [App. 39] "Exposure Draft on Qualifying Special-purpose Entities and Isolation of Transferred Assets, an Amendment of FASB Statement No. 140", which states:

"At Fannie Mae, the securitization of mortgage loans into a mortgage-backed-security is typically initiated by a lender (transferor) who contracts with Fannie Mae corporate to **transfer their loans into a stand-alone trust in return for pass-through certificates** that evidence beneficial interest in the loans in the trust ... Under no circumstance does either Fannie Mae in its corporate capacity or the lender retain control of the loans within the trust ... There are no reissuances of beneficial interest ... These are passive structures with Fannie Mae, as trustee, holding the loans for the benefit of certificate holders and Fannie Mae in its corporate capacity, passing through the payments received from the servicer, and to the extent applicable, paying under its guaranty.... **We believe consolidation should not be required because in neither case does Fannie Mae own nor have control over the underlying loans within the mortgage-backed security."**

3. Plaintiff failed to comply with conditions precedent. [App. 81, par. 3-8]. Gaspard refinanced his homestead property on 4/11/2007 with Countrywide Home Loans, **Inc.**, **[CHL]**. Every payment was timely made until and including 6/1/2009, when a $519.00 trial modification period was offered and successfully completed for

7/1/, 8/1 and 9/1/2009 [App. 8-9]. BANA refused to provide the federally mandated $519.00 permanent mortgage modification on account of Fannie Mae, a heretofore undisclosed investor prohibited by regulations from issuing any mortgage at all, that was demanding instead payment that would amount to 96% of verified income [App. 1-20]. Meanwhile, Gaspard received offers from independent sources for mortgage modifications with payment as low as $267.00 [App. 3], in keeping with the guidelines, but no higher than $608.00 [App. 4] if for the full amount refinanced.

4. On **September 29, 2010**, the Law Offices of David J. Stern filed a Complaint on behalf of the original Plaintiff, BAC Home Loans Servicing, **LP**, **[BAC]**, FKA Countrywide Home Loans Servicing, **LP [CHLS]**, attaching copies of an unendorsed Note [App. 135] and a fraudulent "Assignment of Mortgage...together with the note" **already executed September 30, 2010**, **from MERS to BAC**. [App. 1].

5. A 10/9/2010, Miami Herald article "Foreclosure freeze widens as fears grow", announced that BANA had halted their foreclosure operations pending review of their processes, stating:

"Game-changing revelations from bank employees have piled up in the past month, and legal experts say more are likely to come as Attorney General Bill McCollum caries out a wide-sweeping investigation into shoddy foreclosure law practices. **A sworn statement from a foreclosure "mill" worker leaked this week details stunning account of unabashed fraud at the Law Offices of David J. Stern, a Plantation-based firm that handled more than 100,000 foreclosure cases in the last two years.** Tammie Lou Kapusta, a paralegal who was fired in July 2009, told McCollum staff that Stern's firm systematically forged signatures, back-dated documents, filed false attorney fees and ignored critical flaws in

legal mortgage documents...Kapusta told McCollum staff that she had files and e-mails to corroborate her testimony..." [App.]

6. On 7/14/2011, BAC filed a "Notice of Filing Copy of Assignment of Mortgage," **requested by BANA** and prepared by Barbara Nord, dated 5/10/2011 from MERS as the undersigned **holder** of a mortgage assigning **all beneficial interest** under that certain **mortgage** described below **together with the Note**" [App. 2].

7. In a **5/7/2012**, "Notice of Non-Compliant Written Request under RESPA" [R. 212-218], BAC claimed no duty to answer the **12/27/2010** "QWR" [R. 97-116]. BAC also filed an ex parte "Motion to Amend Pleadings and Substitute Party Plaintiff" [R. 208-211] to "Bank of America, N.A. (BANA), by merger". On 5/17/2012, Judge Eig granted BAC's Motion with the stipulation that the caption stays the same in keeping with regulation, in effect ordering that the action be continued in the name of BAC [R. 220-221]. BANA never filed an amended complaint afterwards. [App. 81, par. 17-20].

8. On 1/22/2013, Gaspard filed his Answer, Affirmative Defenses with a two-count Counterclaim for Fraud and to Quiet Title, with timely jury trial requested and prayer to amend it after BAC had been compelled to provide discovery. [R. 303-314].

9. On 6/19/2013, BANA filed with the court a version of the note [R. 370] now bearing a stamped blank open endorsement from Countrywide Home Loans, **Inc.**, and obtained a Final Judgment from Judge Gillman [R. 371-388; 795-838]. It was vacated [R. 472] on

7/11/13, on the basis of fraud, failure to state a cause of action. BANA appealed the reversal, in Case **3D13-2124**, which was affirmed with opinion by the 3rd DCA [R. 858-860]. [App. 81, par. 21-26].

10. Following a November 4-5, 2014 **non-jury** trial by ambush, Judge Gillman, sua sponte and without any mandated test, denied Gaspard's motion for continuance, severed the compulsory counterclaim in order to enter a Final Judgment of foreclosure **allowing execution and making no mention of the severed counterclaim** [R. 1050-1085; 1125-1130; 3301-3483].

11. Even though Gaspard notified Fannie Mae, Bank of America, Albertelli Law and Julie's Realty that he met the criteria of a Tier 1 applicant, given top priority, in his application for relief through the Homeowner's Assistance Fund (HAF), (a federal/state program that mandates no eviction be effectuated pending the resolution of such application, with payments made directly to the creditors), and that the application was escalated for clarification/immediate intervention to Senior Management at the highest level, as another application under his name was seen being processed for a pay-off of the whole loan, Gaspard was evicted August 15, 2022, as a result of ex-parte orders [R. 3504-3533] illegally obtained by Albertelli Law for Fannie Mae, 2 non-parties to the Case. The property still sits vacant and unrepaired.

12. Gaspard learned that **Fannie Mae** had allegedly liquidated the loan on 4/27/2015; that **BANA** had filed a corrected Year 2015

1099-A with the IRS on behalf of **Fannie Mae** and **an undisclosed Trust for $155,000.00 and no deficiency** [App. 33-34], that **BANA** shows the loan was **paid off in full**, **$228,711.72**, **both** on **3/18/2020** and **again** on **7/31/2020, for a grand total of 457,423.44.** However, nobody would/could give any detailed information or documentation about those transactions. The only complete Detailed Transaction History of the loan that **BANA** could provide is a "**Statement Period: 2/13/2020-4/21/2020** [R. 38] already documenting Corporate Advance Adjustment charges for **7/31/2020**". **BANA** claims to have **acquired** the loan on **8/1/2020 from Fannie Mae, another unrecorded and undisclosed transaction,** in contradiction with BANA's assertions in court to have **acquired** the loan on **4/16/2007;** that the loan was always a BANA loan in order to obtain the Final Judgment; that there had never been any **transfer** to Fannie Mae who claims that the April 11, 2007 loan was **transferred** to them 4/1/2007. Therefore, Bank of America and Fannie Mae have already collected at least $612,423.44 ($155,000.00 plus $457,423.44). That does not include any amount that must have been paid by the trust to Fannie Mae and to Countrywide Home Loans, **INC.**, for the 164,500.00-initial loan. It stands to reason that the loan has already been paid at least four times over, and Gaspard is entitled to the surplus.

13. All attempts to have the Florida supreme Court review these proceedings were automatically denied [App. 81, par. 60-71]. Therefore, review by this Honorable Court is Gaspard's last resort.

REASONS FOR GRANTING THE PETITION

14. The Court should grant certiorari since this is a case involving the interpretation and violation of fundamental, legal, constitutional rights; a case where large number of people might be similarly affected as seen in [App. 53; App. 81] supra; a case of exceptional importance affecting property rights where the Courts' rulings necessarily conflict with multiple decisions of the Florida and U.S Supreme Court, with the Third and other DCAs.

THE THIRD DCA ABUSE OF PCA'S VIOLATES DUE PROCESS RIGHTS

15. This is the perfect case for this Court to review the practice of the 3rd DCA to preclude review by the issuance of PCAs. The Third DCA issuance of a PCA decision without opinion has left Petitioner without an adequate remedy to protect his home from foreclosure by persons acting without authority and entitlement.

16. In a series of rulings over many years, the Fla. Courts began to narrowly define and interpret the word "expressly" of the Fla. Const., Art. V, Sect 3 (2) (A) to be the exclusive domain of a District Court's "written opinion" (R. J. Reynolds Tobacco Co. v. Kenyon, 882 So.2d 986, 988-90 (Fla. 2004)). Additional rulings further restricted and reduced the term "expressly" by removing any ability of written dissents, concurring opinion or citations to meet the new "written opinion" standard for obtaining Supreme Court jurisdiction (Jenkins v. State, 385 So.2d at 1359; Reaves v. State, 485 So.2d 829, 830 (Fla. 1986); Wells v. State, 132 So.3d

1110, 1112-14 (Fla. 2014). With the new PCA Standard, access to the Supreme Court became highly exclusive and nearly impossible to obtain. It is estimated that "PCA's without an opinion" may account for over 70% of rulings in the District Court, which meant that under the PCA standard nearly two-thirds of the population are currently left without access to the Supreme Court of Florida regardless of the merits of their cases. (Leen, Craig. Without Explanation p. 22; 4th DCA PCA Data Report).

17. The Florida Legislature began writing rules around the PCA Standard even though the PCA Standard was never actually written into law. The Legislature made an addition to the Florida Rules of Appellate Procedure which further stripped jurisdiction from the Supreme Court to hear matters related to any case issued without a District Court written opinion. The new rule states that the Supreme Court itself was barred from hearing any case without a written opinion and was now legally mandated to dismiss any appeal from a party who was without a written opinion and that party could not file a motion for reconsideration or clarification regardless of the merits of their case (Rule 9.030(a)(d).)

18. In a twist of irony, the highest Court of the State, the Fla. Supreme Court was now stripped of its own jurisdiction to hear conflict and constitutional law questions, the very purpose of its existence. The Supreme Court's "discretion" to review a case was now extinct, replaced by the DCA's exclusive control of

the Supreme Court's jurisdiction, as the Supreme Court decided the DCA would not be "required" to provide a written opinion to anyone regardless of the merits of their case; not even when requested by the Supreme court itself (Foley v. Weaver, 177 So.2d at 226). This has created an unbounded, unconscionable conflict of interest.

19. The Courts' refusal to rule on the jurisdiction of the Court and to issue any written opinion, except in Case 3D13-2124, coupled with the violations of his fundamental and constitutional rights, have left Petitioner with no other avenue of redress. Gaspard is not alone facing this predicament.

20. Because of the frustration surrounding PCAs, the Florida Supreme Court's Judicial Management Council appointed a Committee on Per Curiam Affirmed Decisions (PCA Committee) which issued a useful report in May 2000. In this report, the PCA Committee gathered statistics and met with attorneys, judges, and the Florida Bar in an attempt to obtain various perspectives on the PCAs. It noted that "PCA opinions undermine confidence in the integrity of the judicial system", "PCAs leave the unavoidable impression that the majority has acted in an arbitrary fashion". Id. at 46. Judge Cope in his dissent to the final report drew on and quoted from the commentary to the ABA Standards Relating to Appellate Courts (1994), that "[l]itigants are entitled to assurance that their cases have been thoughtfully considered. The public, also, is entitled to assurance that the court is thus performing its duty".

21. Through several conferences, the PCA Committee developed a list of recommendations to promote the proper use of PCAs, including suggestions for opinion writing, and suggestions for when a PCA is inappropriate. In that report, the Judicial Management Council suggested types of cases that may warrant a written opinion, hoping that by presenting factors to consider, judges would choose to write an opinion in cases warranting a written opinion, rather than issuing a PCA. These include cases in which a) the decision conflicts with another district; b) an apparent conflict with another district may be harmonized or distinguished; c) there may be a basis for Supreme Court review; d) the case presents a new legal rule; e) existing law is modified by the decision; f) the decision applies novel or significantly different facts to an existing rule of law; g) the decision uses a generally overlooked legal rule; h) the issue is pending before the court in other cases; i) the issue decided may arise in future cases; j) the constitutional or statutory issue is one of first impression; k) previous case law was "overruled by statute, rule or an intervening decision of a higher court".

22. In the U.S. Supreme Court Case Barone v. Wells Fargo, counsel stated:

"Herein, the trial court and 3rd DCA never cited case law to back up their decisions, and the 3rd DCA avoided and failed to address the Void judgement and federal jurisdictional questions of great public importance. Non-opinioned orders in FL have irritated attorneys to the point that one put together the data. (Samantha

Joseph, Can He Say That? Frustrated Attorney Asks, "What's Wrong with the Third DCA?", Daily Business Review.

23. In the U.S. Supreme Court Case Daniel Alexander v. Bayview Loan Servicing, counsel stated, in pages 14-16:

"One of the many objective reasons to question the Third DCA's impartiality is a recent front page DBR article entitled, Can He Say That? Frustrated Attorney Asks 'What's Wrong with the Third DCA. The front-page article reported "*there is no question that the Third District is pro-business and couldn't care less about homeowners.*" (Emphasis added). It further reported that the Third DCA "abuses per curiam affirmances, or PCAs, to avoid explaining their rulings on lender standing, ... [and] misuses the tool to strategically sidestep writing opinions that could provide grounds for rehearing. Instead, they say it uses the decisions to wipe out options for further review and avoid conflicts with other district courts." Instead of a reasoned opinion that would create conflict jurisdiction for further review, the Third DCA issues a PCA that says: you lose because we said so and there's nothing you can do about it. Moreover, the front-page article laid out statistical, empirical evidence that the Third DCA reversed on standing in favor of the banks 87% of the time, while over the same time period, the 1st, 2nd, 4th and 5th DCA's all reversed on standing in favor of the homeowners between 73%-84% of the time. This is not just an anomaly. The front-page article attached a press release that set forth: ... of its sixteen written opinions addressing the standing in recent era foreclosure cases, the Third District has only ruled for a property owner twice: 66 Team, LLC v. JPMorgan Chase Bank Nat. Ass'n, 187 So.3d 929 (Fla. 3rd DCA 2016) and Riocabo v. Fed. Nat'l Mortgage Ass'n, 230 So. 3d 579 (Fla. 3rd DCA 2017). (Consider that in 66 Team, the bank did not admit any documents or evidence at trial to prove its case. And in Riocabo, the bank confessed error - admitting that it must lose on appeal.) ... The neighboring Fourth District has issued 120 written foreclosure opinions on standing, 87 (73%) have been in favor of property owners. ... It's also noteworthy that the Third has only issued sixteen written foreclosure opinions on standing - the fewest of any appellate court in the state."

24. The Florida courts' interpretation of "expressly" to exclusively be a "written opinion" is in conflict with decades of U.S. Supreme Court's jurisprudence which had interpreted the word

"expression" for the U.S. Constitution (*United States v. O'Brien,* 391 U.S. 367 (1968); Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 505-06 (1969). The U.S. Supreme Court did not believe the term "expression" should be so narrowly defined as to only include the "written word" which was often beyond reach in many cases but instead the U.S. Supreme Court found that the term "expression" should be broadly defined to include a person's acts, physical expressions or even the actual outcome (Tinker). More importantly, the U.S. Supreme Court would determine how the term "expression" fit in the context of each individual case noting in Spence v. Washington (1974) that laws dealing with flag burning or misuse are "directly related to expression in the context of activity." But where the U.S. Supreme Court allows for a 'case by case' determination of the term "expression", Florida's constitution hinges its entire Supreme Court Jurisdiction on a single interpretation of the word "expressly" and never considers the facts of an individual case. Thus, the need for review.

VIOLATION OF FUNDAMENTAL AND CONSTITUTIONAL RIGHT TO A TIMELY REQUESTED JURY TRIAL ON COMPULSORY COUNTERCLAIM

25. Art. I, Sect. 22 of the Fla. Const. expressly provides that the right of trial by jury shall be secure to all and remain inviolate. Similarly, Amend. VII of the U.S. Const. provides: "the right of trial by jury shall be preserved." Rule 1.430, F. R. C.

P., also provides that "The right of trial by jury as declared by the Constitution or by statute shall be preserved to the parties inviolate." F.S.A. 65.061(1). Violation of Rule 1.170(a), 1.270(b)

26. In Spring v. Ronel Refining, Inc., 421 So.2d 46 (Fla. 3d DCA 1982), citing to Adams v. Citizens Bank of Brevard, 248 So.2d 682, 684 (Fla. 4th DCA 1971), the Court held:

"In setting the cause for a nonjury trial, the trial court departed from the essential requirements of law ... In the present case, the denial of the right to jury trial is more than the denial of a constitutional right, it is the denial of a fundamental right recognized prior to the adoption of a written constitution", regarding "the order of procedure to be followed by the trial court when a civil action is filed seeking relief historically cognizable only in a court of equity, and the answer contains a compulsory counterclaim legal in nature for which the Defendant is entitled to and demands trial by jury".

27. See also, Cerrito v. Kovitch, 457 So.2d 1021 (1984):

"The right to a jury trial, in the absence of specific statutory authorization, depends upon whether the nature of the cause of action is legal or equitable. However, where both legal and equitable issues are presented in a single case, **"only under the most imperative circumstances...can the right to a jury trial of legal issues be lost through prior determination of equitable claims."** Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 510-11, 79 S. Ct. 948 956, 957, 3 L. Ed. 2d 988 (1959). In such cases the jury trial must be accorded to the person requesting it even though the legal issues are incidental to the equitable issues. Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962)"

28. See, Norris v. Paps, 615 So.2d 735 (Fla. 2d DCA 1993):

"By severing fraud counterclaim in mortgage foreclosure proceeding, trial court either erroneously determined factual issues of fraud without evidence and without a jury, or erroneously entered judgment for mortgagee before it resolved affirmative defense of fraud. Either option would be error."

29. Here, Judge Gillman violated Gaspard's constitutional and fundamental rights to a timely requested jury trial by holding a November 4-5, 2014, non-jury trial by ambush, denying his motions for continuance and by severing the compulsory counterclaim based on fraud and to quiet title in order to enter a final judgment of foreclosure for BAC, **allowing execution and making no mention of the severed counterclaim** [R. 1125-1130; 3301-3483; T4. 15-18; T5. 75-81, 109-124]. Reive v. Deutsche Bank Nat. Trust Co., 190 So.3d 93 (Fla. 2d DCA 2015). These proceedings are void ab initio.

VOID AB INITIO FOR FRAUD, FOR FRAUD UPON THE COURT

30. Fraud was specifically articulated in United States v. Throckmorton, 98 U.S. 61, 65-66, 25 L. Ed. 93 (1878):

"Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud, or deception practiced on him by his opponent ... these and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing". (Citations omitted.)

31. Rule 1.540(b)(4) specifically provides for relief from a void judgment or order. In Horton v. Rodriguez Espaillat Y Asociados, 926 So.2d 436 (Fla. 3d DCA 2006), the Court stated:

("Where a party asserts that the underlying judgment is void, "it is necessary to evaluate the underlying judgment in reviewing the order denying the motion. If it is determined that the judgment entered is void, the 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). In this case, the underlying judgment is void because the complaint, on its face, fails to state a recognizable claim against the Defendant. See Bercerra v. Equity

Imports, Inc., 551 So. 2d 486 (Fla. 3d DCA 1989); Magnificent Twelve, Inc. v. Walker, 522 So.2d 103 (Fla. 3d DCA 1988).)"

32. 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.** Tannenbaum v. Shea, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014).

33. Here, by engaging in outright lies that have prevented the Courts from adjudicating the issues on their merits, counsels committed fraud upon the court, in violation of Rules 4-4.1, 4-3.1, 4-3.3, 4-3.4, 4-8.4, in violation of the National Servicing Guidelines, the various Consent Orders entered into by Plaintiffs, as well as the rules of law pertaining to a constitutionally prohibited taking of property via the same pattern seen in *Butler*.

VOID AB INITIO: LACK OF SUBJECT MATTER JURISDICTION AT INCEPTION

34. Florida law clearly holds that a trial court lacks jurisdiction to hear and determine matters which are not the subject of proper pleading and notice," and "to allow a court to rule on a matter without proper pleadings and notice is violative of a party's due process rights." Caroll & Assoc., P.A. v. Galindo, 864 So.2d 24, 28-29 (Fla. 3d DCA 2003). A judgment based on an issue that has not been framed by the pleadings, noticed for hearing, or litigated by the parties implicates due process

concerns and fails to properly invoke the trial court's jurisdiction. Sabine v. Sabine, 834 So.2d 959 (Fla. 2d DCA 2003).

35. In Lovett v. Lovett, 93 Fla. 611 (1927) [112 So. 768, 775-776], the Florida Supreme court specifically clarified the meaning of the term "subject matter jurisdiction", holding:

"...So that, when it is said that a court has jurisdiction of the subject-matter of any given cause, if these words are to be given their full meaning, they imply, generally speaking: (1) That the court has jurisdictional power to adjudicate the class of cases to which such case belongs; and (2) that its jurisdiction has been *invoked* in the particular case by lawfully bringing before it the necessary parties to the controversy; (3) the controversy itself by pleading of some sort sufficient to that end; and (4) when the cause is one in rem, the court must have judicial power or control over the res, the thing which is the subject of the controversy. This, in a general way, is what we mean when we say that a court has `jurisdiction of the subject-matter and the parties to a cause." [Emphasis added in original].

36. See also, Garcia v. Stewart, 906 So.2d 1117 (Fla. 4th DCA 2005); Lockwood v. Pierce, 730 So.2d 1281, 1283 (Fla. 4th DCA 1999); In Re Estate of Hatcher, 439 So.2d 977, 980 (Fla. 3d DCA 1983); Streicher v. U.S. Bank National Association, 2016 WL 10283592.

THE TWO FRAUDULENT ASSIGNMENTS OF MORTGAGE AND NOTE

37. On 6/19/2013, BANA filed with the court a version of the original note [R. 370] now bearing a **stamped** blank open endorsement from Countrywide Home Loans, **Inc.**, and obtained a Final Judgment from Judge Gillman [R. 371-388; 795-838]. It was vacated [R. 472] by Judge Gillman on 7/11/13, on the basis of fraud, failure to state a cause of action. BANA appealed the reversal, in Case **3D13-2124**. It was affirmed with opinion by the 3rd DCA [R. 858-860],

thereby establishing the law of the case. Florida Dep't of Transp. V. Juliano 801 So.2d 101 (Fla. 2001). [App. 81, par. 21-26].

38. From the 7/11/13 hearing [R. 472; 747-777, p. 13-21]:

"The Court: **Mr. Gaspard, I'll tell you what I'm going to do. I'm going to grant your motion to vacate the judgment and I'm going to dismiss the case, but without prejudice.**
Ms. Hernandez: Your Honor, can know the reason behind the ruling?
The Court: **The note is payable to Countrywide Home Loans, Inc. the suit was filed on the 29th of --...September 29th at 4:06 p.m. is when it was clocked at the Hialeah Courthouse. On that date, BAC Home Loans Servicing did not have this note, according to the documents in the court file. The copy of assignment of mortgage provides for MERS as nominee for Countrywide Home Loans, Inc. It has a date of September 30th on it, claiming to be effective as of August 24th, more than a month earlier, but the jurat on here for the assignment to be valid is dated September 30th. That's providing for BAC Home Loans Servicing, LP, formally known as Countrywide Home Loans Servicing, LP...You don't have - the chain is not continuous here and the jurat dated September 30th, attempting to date this back to August 24th.**
Ms. Hernandez: **Your Honor, I see the dates. Even if the effective date is not accepted by the court, it's still the same entity. Countrywide stated on the assignment - BAC was formally known as Countrywide.**
The Court: **Not Countrywide Home Loans Servicing, LP. Obviously, David Stern jumped the gun here because I also see on closer look at this, the lis pendens is dated September the 28th..."** [p13-15]; violation of Rule 1.110 (b) [p15-18]; MERS could not transfer the note with the mortgage [p18-19]; no standing, did not state a cause of action, fraud [p19-20]; and finally,
"The Court: **We are going to grant the motion to vacate, remand it for trial and transfer it to Section 59 provided you have a total evidentiary hearing on how this note was transferred, how it all came into being to give standing to the plaintiff".**

39. Indeed, it is impossible for Miranda Cristerna and Ruby Gutierrez to have witnessed on 9/30/2010 the execution of an Assignment of Mortgage and Note by Chanda Smith, Assistant Secretary for MERS, in front of Special J. Bell, Notary Public, all 4 parties in the State of Texas, when that very same signed

and notarized document was already filed with the Court in Florida, on 9/29/2010. This falsified Jurat is certainly a third-degree felony, pursuant to Fla. Stat., 117.05 (4), 117.105, and 831.01.

40. Besides this ruling by Judge Gillman, Gaspard's contentions about the filing of the two fraudulent "Assignment of Mortgage together with the note" were acknowledged on 10/5/15, by counsel who quoted Farneth v. State, 945 So.2d 614, 617 (Fla. 2d 2006) to demand that the 3rd DCA refrain from ruling on the fraud:

"A fundamental principal of appellate procedure is that an appellate court is not empowered to make findings of facts...such findings are reserved for the trial court, which heard argument on the Borrower's Emergency Motion on August 27, 2015 and found for the Bank." Counsel further stated: **"the Borrower contends that the Bank's foreclosure was improper or fraudulent due to two assignments of mortgage filed in the lower court and asks this court to make a declaratory judgment as to the validity of the assignments. The Bank believes the trial court properly entered final judgment and correctly denied the motion to vacate. The Bank's Answer Brief, currently due on November 3, 2015, will provide the Bank's answer to these issues as it supports the order on appeal."** (Emphasis added). [App. 59, at pages 3, 6]

41. Liebler will further acknowledge the "Assignment of Mortgage together with the Note" in their **out-of-court** October 27, 2015, par. 2-3, and October 30, 2015, par. 3 letters [App. 27-28]:

"In your inquiry, you have stated concerns over the foreclosure action against you related to the above-referenced property, and also regarding lender-placed insurance on the property after the foreclosure sale. As you stated, Bank of America commenced a foreclosure action against you on **September 29, 2010** in the circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida pursuant to a case styled BAC Home Loans servicing, LP fka Countrywide Home Loans servicing, LP v. Felix Gaspard, et al, Case Number 2010-053090-CA-01 (the "Foreclosure"). **An Assignment of Mortgage transferring your mortgage loan was recorded on October 20,2010,** at Official Records Book 27460, Page

1739, of the public Records of Miami-Dade County, Florida (the "Assignment"). **The Assignment was executed on September 30, 2010** with an effective date of August 24, 2010. **Bank of America disputes the characterization of the assignment (which you termed "a felony"), and categorically denies any criminal activity related to your loan.**
A Final Judgment of Foreclosure was entered on November 5, 2014. **In entering the Final Judgment, the Court implicitly accepted the Assignment as valid ... Again, Bank of America denies your allegations of fraud in the conduct of the Foreclosure. You have raised these concerns to the court on several occasions, both in the foreclosure and in the Appeal. The Foreclosure Court has rejected your arguments and the appeal remains pending. The Appeal is the appropriate forum to decide the merits of your allegations."** 10/27/2015, letter par. 2-3, and 10/30/2015 par. 3 [App. 27-28].

42. In turn, BANA would issue their own **out-of-court** October 28, 2016 letter [App. 32] wherein they would state in paragraph 6:

"Regarding your allegations of fraudulent documents or wrongdoing in connection with the Loan, Foreclosure Lawsuit, and appeal, **you have raised these concerns on several occasions, both in the Foreclosure Lawsuit, in the Appeal, and the Consumer Financial Protection Bureau. Bank of America categorically denies any allegations of fraudulent documents or wrongdoing and both court in the Foreclosure Lawsuit and the Appeal have rejected these arguments as well.** In correspondence previously sent to you dated October 27, 2015 and October 30, 2015, Bank of America's counsel informed you of same. Copies of these items of correspondence are enclosed herein for your reference. **Again, any allegations or concerns regarding the loan and any conduct allegedly occurring in the Foreclosure Lawsuit or Appeal were more appropriately addressed in those actions. Further, Bank of America denies any and all allegations that its counsel has violated any of their ethical obligations in connection with the Foreclosure Lawsuit and Appeal."** [App. 32, par. 6]

MERS COULD NOT LEGALLY ASSIGN ANYTHING TO ANYONE

The two (2) recorded "Assignment of Mortgage...**together with the Note**" [App. 1-2] failed to attach any enabling documentation authorizing said Assignments. MERS was never mentioned in the Note and thus, had no authority to assign the note. **Further, MERS itself**

proved that it does not own the promissory notes secured by the Mortgages and has no right to payments made on the notes. Mortgage Electronic Registration Systems, Inc. v. Nebraska Department of Banking and Finance, 704 N.W.2d 784 (Neb. 2005).

COUNTRYWIDE HOME LOANS, INC. (CHL) NO LONGER HAD ANY RIGHTS

The evidence that a Trust is involved with the Loan [(Fannie Mae letter of ownership [App. 49]; alleged Recon Trust's possession of Note as of April 16, 2007 [T5. 75-81; R. 1086-1124]; 2 separate "Year 2015 1099-A" with three different account numbers for this loan filed with the IRS [App. 33-34]; unexplained Attorney Trustee charges in Final Judgment [R. 1127-1130]], as well as off the record acknowledgment of such by Fannie Mae are sufficient to ascertain that the Loan was securitized. The loan had been paid. CHL had no more rights in the loan. Fannie Mae letter [App. 49].

Any written assignment from MERS or CHL dated after April 1, 2007 as the claimed date of transfer to Fannie Mae, and/or after April 16, 2007 as the claimed date of possession of the Note by Recon Trust, is fraudulent and being recorded is recording fraud. Therefore, the Final Judgment is void for fraud upon the Court.

BANA DID NOT EVEN ATTEMPT TO PROVE BAC HAD STANDING AT INCEPTION

The law provides that the Court, when it is obvious or apparent from the pleadings that standing is an issue, make an inquiry on its own motion into the Court's standing. Polk County v. Sofka, 702 So.2d 1243, 1245 (Fla. 1997). When a substituted

plaintiff's standing is disputed, the substituted plaintiff must prove: (a) the original plaintiff's standing to sue at the outset of litigation, and (b) the substituted plaintiff's standing at the time of judgment. Lamb v. Nationstar mortgage, LLC, 74 So.3d 1039 (Fla. 4th DCA 2015). "A plaintiff alleging standing as a holder must prove it is a holder of the note and mortgage both at the time of trial and also that the (original) plaintiff had standing as of the time the foreclosure complaint was filed", as held by numerous court cases, like Corrigan v. Bank of America, N.A., 189 So. 3d 187 (Fla. 2nd DCA 2016); Russell v. Aurora Loan Services, LLC, 163 So.3d 639 (Fla. 2nd DCA 2015); Chery v. Bank of America, N.A., 183 So.3d 1253 (Fla. 4th DCA 2016); Assil v. Aurora Loan Services, LLC, 171 So.3d 226 (Fla. 4th DCA 2015); Geweye v, Ventures Trust 2013-I-H-R, 189 So. 3d 231 (Fla. 2nd DCA 2016); Kyser v. Bank of America N.A., 186 So.3d 58 (Fla. 1st DCA 2016); McLean v. JP Morgan Chase Bank Nat'l Ass'n, 79 So.3d 170, 173 (Fla. 4th DCA 2012); Frost v. Christina Trust, 193 So.3d 1092 (Fla. 4th DCA 2016). Kiefert v. Nationstar Mortg., LLC, 153 So.3d 351, 353-54 n.4 (Fla. 1st DCA 2014).

The two "Assignments of Mortgage together with the Note" from MERS to BAC prove beyond a shadow of a doubt that BAC did not and could not have any standing on 9/29/2010. That is why BANA has not made any effort to prove BAC's standing at inception. Instead of stepping into the shoes of BAC, they have demanded that the Court

consider the umbrella of BANA so that they can fraudulently claim that any entity under that umbrella is the same as any other entity, that an asset of any one entity can be claimed as an asset of any other entity when convenient and expedient. See, Gladding Corp. v. Register, 293 So.2d 729 (Fla. 3d DCA 1974). Therefore, the Final judgment is void ab initio and review is necessary.

VOID FOR LACK OF JURISDICTION: ORDERS OBTAINED BY NON-PARTIES

a) BANA IS A NON-PARTY, NOT PROPERLY BEFORE THE COURT

"[i]f a party files a motion to amend a pleading, the party **shall** attach the proposed amended pleading to the motion." Fla. R. Civ. P. 1.190(a); Varnedore v. Copeland, 210 So.3d 741 (Fla. 5th DCA 2017). The proper procedure for substituting parties in the case of a transfer of a party's interest pending litigation is outlined in Rule 1.260 (c), F. R. Civ. P., which provides:

"[I]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule", which states: "The motion for substitution may be made by any party or by successors or representatives of the deceased party **and, together with the notice of hearing, shall be served on all parties as provided in rule 1.080** and upon persons not parties in the manner provided for the service of a summons."

Here, BAC filed an **ex parte** (thus, no notice of hearing or hearing set) Motion to **Amend Pleadings and Substitute Party-Plaintiff by merger** [R. 208-211], with the misrepresentation there would be no prejudice to Defendant and without attaching a copy of

a proposed amended complaint. On May 17, 2012, Judge Eig granted BAC's Motion with the stipulation that the caption stayed the same in keeping with regulation, in effect ordering that the action be continued in the name of BAC [R. 220-221]. Plaintiff never filed an amended complaint and there was no service afterwards [R. passim]. When a party does not comply with the requirements of rule 1.260, it means that the substituting party was never properly substituted. Taylor, Bean & Whitaker Mortgage Company v. wright, 253 So.3d 72, 73-74 (Fla. 1st DCA 2018). Therefore, the original complaint remained the operative complaint, with its fraudulent attachments. BANA is not a party to the case and is not properly before the court, per Rule 1.190 (a), and per Rule 1.260 (c).

FANNIE MAE AND ALBERTELLI LAW ARE NOT PROPERLY BEFORE THE COURT

. Judge Fine granted relief to Albertelli and Fannie Mae, 2 non-parties in the underlying foreclosure action, not properly before the Court and not entitled to relief. They were never made parties nor did they file a motion to intervene [R. *passim*]. They could not have been made party to the case nor could they have been allowed to intervene in the case. Florida courts have consistently found purchasers pendente lite lack any interest in foreclosure and may not intervene. Andresix Corp. v. Peoples Downtown Nat'l Bank, 419 So.2d 1107, 1107 (Fla. 3d DCA 1982).

Here, besides the **9/28/2010** lis pendens filed by BAC, Gaspard had filed his own **4/24/2015** lis pendens in the case [App. 25] prior

to Fannie Mae's **4/27/2015** alleged purchase of the property pursuant an unrecorded, illegal, Conditional Assignment of Bid, a nullity by operation of law [R. 1330]. As such, Fannie Mae was on notice that the property was subject to both a foreclosure action and of a counterclaim, and was therefore not entitled to intervene.

Fannie Mae and Albertelli are also defaulted parties in the Amended Severed Compulsory Counterclaim; there are still Motions for Default pending against them for failure to serve any responsive papers [R. 1826-1827; 1902-1911; 2525-2535; 2885-2886].

Judge Fine did not have jurisdiction to grant the "Orders" to non-parties Albertelli and Fannie Mae [R. 3504-3533]. Gaspard was not served with copy of the ex-parte Motions, received no notice of hearing and none was held, was not served with copies of the entered orders. Rule 1.080(a), F. R. Civ. P., requires "all orders" issued by a trial court be "served in conformity with the requirements of F. R. Jud. Admin. 2.516." Courtney v. Catalina, Ltd., 130 So.3d 739, 740 (Fla. 3d DCA 2014). Any relief based upon these entities' pleadings and documents are void and forever subject to collateral attack. Herbits v. City of Miami, 197 So.3d 575, 578 (Fla. 3d DCA 2016).

VIOLATION OF DUE PROCESS RIGHT TO DISCOVERY AND FAIR TRIBUNAL

. Gaspard's counterclaims and affirmative defenses were effectively eviscerated by Judge Eig's denial of all his attempts to obtain discovery from Plaintiff, as previously ordered by Judge

Eig himself and also by Judge Gillman [R. 642-671; R. 851-876; R. 870-876; R. 909-941. From [R. 1006-1038, p. 10-14] of the 4/24/2014 transcript about transfers or lack thereof and denial of discovery:

"The Court: May I see it? Mr. Gaspard, **I want to tell you and I am putting the Plaintiff's attorneys on notice that I am well aware that the banks have an extremely restrictive obligation of ... concept of discovery in these matters. They think that discovery is just what they want to introduce at trial, the four exhibits. I don't agree with that at all. So, I want to see what the order says and then I am going to compare it to ...**

The Court: All right., so Mr. Weinstein, did you all provide the full chain of custody and title of the mortgage and the note in the case and all documents created at the time of the transfer?

Mr. Weinstein: We asked our client for those documents and the client provided us documents. The documents that were provided we provided to Mr. Gaspard. We also gave notice of filing those and they included the list of Bank of America entities. We -

The Court: Hold on Mr. Weinstein. So, I take your answer to mean, no?

Mr. Weinstein: My answer is we provided all documents in our response, yes.

The Court: Oh yeah? Because the way I heard your answer you asked Bank of America for documents, they didn't give you these documents they gave you some things and these things that they did give you, you turned over. That's what your answer sounded like to me.

Mr. Weinstein: Respectfully, Your Honor, I apologize if that's what it sounded like but I was going to add is that reason that this case is different from a lot of other foreclosure cases is that **this loan has always been within the Bank of America family of entities** ...

Mr. Gaspard: **Mr. Weinstein keeps saying that the loan has always been within Bank of America's family. It is a Fannie Mae loan it is not a Bank of America loan. As a matter of fact, I've got proof. I've got from Fannie Mae themselves showing that the loan -- the note belongs to them, not to Bank of America.** And by the way that's proof has already -- was already entered into the Court. It is part of the Court documents ...

The Court: All right, what is your response to this Mr. Weinstein?

Mr. Weinstein: **Yes, Your Honor, we've already had two hearings where we talked about these issues specifically. The October 31 hearing and the November hearing, in both of those we stated that while Fannie Mae has an ownership interest with the originator of**

the loan, they transferred it to Bank of America approximately five days after origination and the BAC family of lending has been the holder of the note throughout. Since 2007 which is three years prior to this case being formed.

The Court: If you provided as you were required to by the discovery order, the documentation and all the documents created around that transfer.

Mr. Weinstein: No, Your Honor, we provided documents regarding the holder of the note.

The Court: You are required in discovery to provide the full chain of custody and title of the mortgage and note in the case and all documents creating the title of transfer. Having just stated a few moments ago that it was always in the Bank of America family now the statement that you're making to the Court is that it was created by Fannie Mae and transferred five days after to Bank of America.

Mr. Weinstein: Yeah.

The Court: Which is a completely different statement. You are required by the discovery to have turned over the documents to the chain of custody and everything regarding that transfer. Have you all done that?

Mr. Weinstein: No, Your Honor.

The Court: Okay.

Mr. Houston: Your Honor, I apologize. If I may interject?

The Court: Yes, because this is some serious hot water so I don't know if you want to interject or not. Well, you're a very good friend to Mr. Weinstein if you want to jump into this because Mr. Weinstein just made the statement that it was always in the Bank of America family and them a few minutes later that it was originated by Fannie Mae and transferred. And under a Court order requiring that the documentation of the transfer be turned over it was not turned over.

Then the explanation was not, well we didn't turn it because we didn't have it, or we couldn't get it. It was it was never transferred, it was always in the Bank of America family, which seems to the Court like a statement which is problematic..."

. On 6/24/2014, Gaspard filed a Motion to add Fannie Mae and MERS as Indispensable Party Plaintiffs [R. 921-929], denied by Judge Eig on 7/10/2014 with leave to add Fannie and MERS to the counterclaim [R. 945-946; 991-1005]. The irregularities caused Gaspard to file Motions for disqualification [R. 885-910; 930-931;

948-959; 966; 970-989], and a writ of certiorari to appeal the judge's decisions, Case # 3D14-1922, denied on 3/18/2015.

. These proceedings are void ab initio for violation of Gaspard's due process right to discovery and a fair tribunal.

VIOLATION OF CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS

. Judge Gordo expressed her decision not to revisit any of the previous rulings made by Judge Eig [R. 3622-3632] regardless of the amount of new evidence submitted, in violation of Rule 2.215(f) and of Gaspard's fundamental and constitutional due process rights. Judge Gordo went even further by refusing to rule on 13 separate motions submitted since December 2016 and six (6) separate Motions for Administrative Clerk Defaults against the named Counter-Defendants for failure to file any responsive papers [App. 81, par 53-59]. That refusal negatively impacted Gaspard's ability to mount any defense against Plaintiff's manipulations of the record, against their claim of law of the case, res judicata, etc. **THESE ARE THE PENDING MOTIONS JUDGE GORDO REFUSED TO RULE ON:** **1**) 12/13/16 Request to Plaintiff's Counsel for Admissions (Albertelli/Mosby) [R. 1828-1827]; **2**) 5/8/17 BANA/Liebler Motion to Dismiss Amended Counterclaim [R. 2362-2374]; **3**) 5/22/17 Gaspard's Answer in Opposition/**Request for Evidentiary Hearing** [R. 2389-2410]; 4) 7/12/17 Purchaser's Motion for Writ of Possession [R. 2432-2442]; **5**) 7/13/17 BANA-Liebler Memorandum of Law in Support of Motion to Dismiss (**Not on docket, not in Record**) [App.

37]; **6**) 7/31/17 Def. Motion to Cancel 8/10/17 Hearing on Writ of Possession/Demand for Certified Proof of Authority and to Post Bond [R. 2501-2514]; **7**) 8/7/17 Motion for Default (MERS) [R. 2525-2527]; **8**) 8/7/17 Motion for default (Fannie Mae & Michael Williams) [R. 2528-2530]; **9**) 8/7/17 Motion for Default (LaCroix) [R. 2531-2533]; **10**) 8/7/17 Motion for Default (Van Ness) [R. 2534-2535]; **11**) 8/8/17 Answer to Plaintiff's Memorandum of Law in Support of Motion to Dismiss Amended Counterclaim. **Request for Evidentiary Hearing.** [R. 2589-2668]; **12**) 8/31/17 MERS' Motion to Dismiss [R. 2702-2884]; **13**) 9/20/17 Motion for Default (Albertelli) [R. 2885-2886]; **14**) 9/20/17 Def. Motion for Extension of Time to Answer MERS [R. 2887-2889]; **15**) 9/29/17 Renewed Motion to Invalidate Certificate of Title for Fraud. **Emergency Evidentiary Hearing Requested.** [R. 2890-2904]; **16**) 10/3/17 Notice of Inquiry/Proof of Authority /Demand for Bond [R. 2905-2915]; **17**) 10/10/17 Motion for Default (Anastasia) [R. 2916-2917]; **18**) 10/24/17 Albertelli Motion to Dismiss [R. 2932-2939]; **19**) 11/09/17 Def. Motion for Continuance pending Appeal [R. 2943-2945].

. Gaspard also sought the intervention of other judicial authorities to resolve his dire situation as time was running out for redemption of the property. See writs of Mandamus [App. 82-83], writs of Prohibition, letters to and from Judge Soto [App. 77-78]; to and from Judge Bailey [App. 75-76]. To punish Gaspard for his attempts to obtain evidentiary hearings and rulings, Judge

Gordo issued an "Order to Show Cause" [R. 2928-2931], leading to the 11/15/2017 preclusion Order [R. 2963-2965], in violation of Article 1, Section 21 of the Florida Constitution: "The Courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

VIOLATION OF CONSTITUTIONAL RIGHT OF JUDGMENT ON THE RECORD

. From that point on, Gaspard could not have reflected into the records even the transcripts of previously held hearings, thus, he could not factually rebut counsels' outright fraud. All attempts to have the lower court's records supplemented were denied until 8/13/2019, when the 3rd DCA granted Gaspard's 8/6/2019 Motion to Supplement the Record with the transcripts of hearings held on 1) 3/5/2015 [R. 3633-3642]; 2) 8/27/2015 [R. 3622-3632]; 3) 3/9/2017 [R. 3604-3613]; 4) 4/27/2017 [R. 3553-3570]; 5) 5/4/2017 (Insurance Proceeds)[App. 35]; 6) 11/14/2017 (AM) [R. 3546-3552]; 7) 11/14/2017 (PM) [R. 3614-3621]; 8) 2/28/2019 [R. 3643-3676]. The transcripts of the November 4-5, 2014 non-jury trial was finally reflected in the records on March 1, 2019 [R. 3301-3483].

. Gaspard's Amended Severed Compulsory Counterclaim [R. 1970-2197] raised 25 counts against 23 identified parties and against unknown John and Jane Doe #1-50, wherein he pled with specificity the elements of the cause of action of (a) **Fraud in the Inducement:** Count II, Count X, Count XXII; (b) **Common Law Fraud:** Count XVI; Breach of Contract due to 1) **Fraud by Deception;**

5) the two separate "Assignment of mortgage...together with the note are fraudulent and bogus securing nothing (a through u); Count XXII, where Gaspard raised at least 11 counts of fraud: violation of FAS 140; fraud, fraud upon the Court; permanent conversion of note to stock; submission of false documents to court; fraud by adhesion; prima facie evidence of counterfeit fraud; attempted theft and theft; securities fraud, deceptive practices; copy of promissory note, Count II of security fraud; bifurcation; tax fraud; 2 MERS assignments, felony land record fraud; disparagement of title; fraud in factum; fraud in the inducement; overall, RICO; (c) Aiding and Abetting Fraud; Counter-Defendant's joint and several liabilities; Count XXIII, Wrongful Foreclosure; Slander of Title; Quiet Title [R. 1970-2197].

. On 6/27/2017, Judge Gordo held a hearing on the BANA/Liebler "Joint Motion to Dismiss", attended also by Van Ness Law firm and Albertelli Law. She challenged counsels to show on the record where the counterclaim was ever addressed, withheld adjudication, requested appropriate memoranda from all, opining:

"Right, but where that counterclaim was severed, in other words, Mr. Gaspard did not have the opportunity to present that at the time of the trial or his arguments as to why there was fraud prior to. Basically, you want me to say that the Court severed his ability to present counterclaims and facts on that issue before the Court, but you want me to find that it's been litigated, or it's been dealt with?" [R. 2669-2695, p. 15-18, 21-23, 28].

. On 2/28/2019, the Honorable Judge Ruiz held a hearing on the Joint Motions to Dismiss [R. 3643-3676, p 17-18] and stated:

"The Court: **Now most of your argument is centered on what was addressed earlier, which is you believe that the severed counterclaim is entitled to its own independent evidentiary hearing. The issue in this case becomes were the arguments raised in your severed counterclaim addressed by a full, with due process afforded, bench trial.** My understanding is it was. To the extent there are arguments that were not, they were already either time-barred or mooted. So, what I need to do is, as sometimes I like to say I need to see how it writes. I'd like to reserve and have you guys prepared a very thorough order for my review. If I feel that it is well-taken, and I can match up, for instance, **how arguments being raised in the amended severed counterclaim were indeed addressed at the bench trial because that's really the key for a res judicata; that we talked about these things. The collateral estoppel really means that these things were covered. For example, a lot of what has been shared here by Mr. Gaspard deals with the fraud elements. I need to make it clear. I need to see an order that explains that these things were properly addressed and has record support for that or talks about it. We all know that if I ultimately agree with you, this is going to get appealed.** So, I need to see how thorough that order can be, so that if I'm comfortable with it, I know that it covers all the bases. If, Mr. Gaspard, I look at their order and I disagree with it, then I'm going to just simply enter my own order where I deny it, and I order them to answer the amended counterclaim. **I need to see how it writes because there is too much of a procedural history here."**

. Judge Ruiz's 3/29/2019, "Order Granting Joint Motion to Dismiss Amended Counterclaim with Prejudice" [R. 3484-3491] stated on p. 7: **"FINAL ORDER AS TO ALL PARTIES SRS #: 12 (OTHER): 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"**; on p. 1, "The Court finds that all of Gaspard's claims are barred by res judicata, collateral estoppel, merger doctrine, litigation privilege, and are otherwise unsupported by law or facts." Yet, Judge Ruiz certifies, on p. 2:

"On November 5, 2014, this Court entered a final judgment of foreclosure against Gaspard and **severed his counterclaims because**

they were not addressed during the foreclosure trial." and "Although titled as an amended counterclaim, Gaspard's counterclaim **names multiple Defendants who were not parties to the foreclosure and raises multiple claims that were not included in the original counterclaim.** As such, with respect to the newly named Defendants, Gaspard's Amended Counterclaim is actually a third-party complaint." [R. 3484-3491, page 2].

. Judge Ruiz erred when he entered the "Order" dismissing Gaspard's Amended Severed Compulsory Counterclaim [R. 3484-3491]. The jurisdiction of the 11th Circuit was not properly invoked, thus rendering all ensuing proceedings void ab initio; there is no valid judgment entered by a court of competent jurisdiction for due process violations. Counsels did not even try to establish that the cited doctrines apply as there is no identity of parties, of issues, of cause of action, of thing sued for. Albertelli Law and Fannie Mae are not properly before the Court and not entitled to relief. Gaspard was denied his due process rights to a judgment on the record. Judge Ruiz's Orders are void and review is necessary.

VIOLATION OF DUE PROCESS RIGHT OF FAIR TRIBUNAL

. It is axiomatic that [a] **fair trial tribunal** is a basic requirement of due process." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 876, (2009). Because fraud on the courts pollutes the process society relies on for dispute resolution, subsequent courts reason that "a decision produced by fraud on the courts is not in essence a decision at all, and never becomes final. Judgments obtained by fraud or collusion are void, and confer no vested title." League v. De Young, 52 U.S. 185, 203, (1850). Due

process does not permit fraud on the court to deprive any person of life, liberty or property. A biased court also violates constitutional due process guarantees by tolerating that fraud.

. In Trump v. Vance, No.: 19-635, the U.S. Supreme Court reaffirmed "In our system of government, as this court has often stated, no one is above the law. That principle applies, of course, to a president." Yet, the 3rd DCA has elevated the judiciary above the U.S. and the Fla. Constitutions from which the Judge derives his power in explicitly expanding the doctrine of **"Absolute Judicial Immunity for judicial acts not taken in the clear absence of jurisdiction"** into **"Blanket Judicial Immunity"** and to affirm that any judge is afforded judicial immunity by

"The blanket law, the blanket law that says that claims against any judge are completely, 100 percent barred by absolute judicial immunity. As long as any judge is acting in their judicial capacity, making whatever ruling, whether or not that ruling is something you agree with, or whether the ruling is completely legally wrong, there is absolute judicial immunity. So, tell me why I should disregard that law and not grant this motion ... The law in Florida is that judicial acts are entitled to absolute 100 percent judicial immunity." [3D20-14]

. In Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 1687 (1974), the U.S. Supreme Court held:

"When a state officer acts under a state law in a manner violative of the Federal Constitution, he comes into conflict with the superior authority of that Constitution, and he is in that stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart him any immunity from responsibility to the supreme authority of the United States."

VIOLATION OF TAKINGS AND DUE PROCESS CLAUSES

. The Fifth Amendment has two property clauses: The Taking Clause protects owners from having their property "taken for public use" without "just compensation" and the Due Process Clause protects them against "being deprived ... of property without due process of law." In Stop the Beach Renourishment v. Florida Dept. of Environmental Protection, 130 S. Ct. 2592 (2010), a plurality of this Court embraced the doctrine of "judicial takings" and concluded that the Takings Clause of the US. Constitution protects property owners against takings effectuated by the judiciary in the same way that it protects them against takings perpetrated by legislatives or executives. In the plurality's view, "it would be absurd to allow a State to do by judicial decree what the Takings Clause forbids it to do by legislative fiat...if a legislature or a court declares what was once an established right of private property no longer exists, it has taken the property, no less than if the State had physically appropriated it or destroyed its value by regulation." *Id.* at 2601-2602. See also, Hill v. Suwanee River Water Management District, 217 So.3d 1100 (2017).

. Here, the Florida judiciary has evidently declared that it has jurisdiction to effectuate the constitutionally prohibited "Taking without due process and without just compensation" of a pro se black disabled senior citizen's homestead property, for no legitimate public purpose but on the behalf of and for the benefit

of a still unidentified private real party in interest, by means of the same type of fraudulent and vexatious foreclosure actions initiated by and through the same "plaintiffs", where the pro se black disabled senior citizen was judicially precluded from asserting his fundamental, legal and constitutional rights to due process; access to the courts; property rights; right to a timely requested trial by jury on his compulsory counterclaim; right to set off, recoupment or redemption; to equal protection under the law, and where the judiciary under the color of law and authority allowed plaintiffs to commit fraud upon the court with impunity.

. The Fourteenth Amendment provides: "nor shall any state deprive any person of life, liberty, or property, without due process of law". Due process requires procedures designed to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party." Fuentes v. Shevin, 407 U.S. 67, 81 (1972). The "particular factual situation" defining the requirements of due process in the foreclosure context includes pervasive error, disarray, and fraud in the foreclosure system. Considered against that backdrop, defendant's ability to meaningfully defend his home depends on his ability to test the factual evidence arrayed against him in a manner that is "meaningful, full and fair, and not merely colorable or illusive" (Hofer, 5 So.3d at 771), from his ability

to obtain discovery to his opportunity to present his legal arguments before the case is disposed of via trial.

THE DUE PROCESS TEST

. Gaspard clearly satisfies the Court's two-tiered analysis for due process challenges to conduct which, like the one in this case, involves property rather than liberty interests.

A. The Significance of the Deprivation

. Gaspard clearly satisfied the first-tier requirement. The Court has been a steadfast guardian of due process rights when what is at stake is a person's right "to maintain control over [her] home" because loss of one's home is "a far greater deprivation than the loss of furniture." United States v. James Daniel Good Real Property, 510 U.S. 43, 53-54 (1993).

B. State Action

. The Court has set out two elements that must be met in order to establish state action under the 14th Amendment: "First, the deprivation must be caused by the exercise of some right or privilege created by the State. Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor." Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982).

. The second tier is also satisfied since Florida has required that mortgage foreclosure actions be supervised by the judiciary for 190 years. Daniels v. Henderson, 5 Fla. 452 (1854) (construing Fla. Acts of 1824). At the time of this Complaint,

foreclosures in Florida were regulated by Fla. R. Civ. P. 1.110(b), which requires verification of foreclosure complaints. See, In re Amends to the Fla. R. Civ. P., 51 So.3d 1140 (Fla. 2010).

C. The *Mathews* Test

1. The private interest

. The "private interest" prong of the *Mathews* test weighs heavily in Gaspard's favor. As Daniel Good again underscores, Gaspard has an enormous interest in retaining his home.

2. The Risk of Erroneous Deprivation

. The risk of an erroneous deprivation when the decision rests on fraudulent evidence manufactured by the opposing party should be self-evident. "Using false or fraudulent evidence "involve[s] a corruption of the truth-seeking function of the trial process." United States v. Agurs, 427 U.S. 97, 107 (1976); Miller v. Pate, 386 U.S. 1 (1967); Caldwell v. Mississippi, 472 U.S. 320 (1985); Darden v. Wainwright, 477 U.S. 168, 181-82 (1986).

3. The governmental interest

. Requiring plaintiffs in foreclosure actions to prove legal ownership of the underlying note and mortgage would not create an extra administrative burden; it is a burden basic to all civil litigation - standing to sue. Warth v. Seldin, 422 U.S. 490, 498 (1975) (standing "is [a] threshold question in every federal case, determining the power of the court to entertain the suit").

CONCLUSION: THE NEED FOR SUPREME COURT INTERVENTION

. By denying him due process, the Courts have decided that Gaspard has no right to legally defend his homestead property from being Taken via a fraudulent foreclosure action. The courts are no longer regulating or creating a private scheme for lenders; they have taken overt official action to protect these bad actors from the legal consequences of their abundantly evidenced intentional fraud. By refusing to issue an opinion, the 3rd DCA insulated its views from challenge in the Florida Supreme Court despite the fact its holding is irreconcilable with so many of its sister courts, the Florida and the US Supreme Courts. If this Court does not grant Certiorari Writ, corruption of foreclosure proceedings in Florida will effectively continue to be immune from challenge.

. Federal court review, in turn, is limited by the Rooker-Feldman doctrine, which deprives "lower federal courts" of "subject matter jurisdiction" to review state court decisions on foreclosure matters, even as to due process/fraud claims similar to Gaspard's. See, Warriner v. Fink, 307 F.2d 933 (5th Cir. 1962); Pennington v. Equifirst Corp., No. 10-1344-RDR, 2011 U.S. Dist. LEXIS 9226 (D. Kan. Jan. 31, 2011). Review of the Third DCA and of the lower court's conduct, therefore, can only be accomplished by this Honorable Court through a Petition such as this one.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted