APPENDIX

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Appendix A

Order On Motion for Reconsideration En Banc of Motion for a Writ of Mandamus to Compel the Constitutional and Inviolate Right to a Jury Trial

SC230264

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 6/4/2024 1:26:33 PM

Notice Content:

Motion Filed: 5/16/2024
Motion Filed By: Gordon Clark
Order Date: 06/04/2024

Order: Denied

By the Court

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix A

Order On Motion to Vacate Superior Court of Connecticut's Final Judgment Due to Lack of Subject Matter Jurisdiction and in Personam Jurisdiction

SC230271

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 6/4/2024 1:30:58 PM

Notice Content:

Motion Filed: 5/24/2024
Motion Filed By: Gordon Clark
Order Date: 06/04/2024

Order: Dismissed

By the Court

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix A

Order On Motion to Vacate Superior Court of Connecticut's Final Judgment Due to Lack of Standing

SC230272

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 6/4/2024 1:32:43 PM

Notice Content:

Motion Filed: 5/24/2024
Motion Filed By: Gordon Clark
Order Date: 06/04/2024

Order: Dismissed

By the Court

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix A

Order On Motion to Vacate Superior Court of Connecticut's Final Judgment Due to Fraud Upon the Court, which Vitiates Said Judgment

SC230273

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 6/4/2024 1:33:58 PM

Notice Content:

Motion Filed: 5/24/2024
Motion Filed By: Gordon Clark
Order Date: 06/04/2024

Order: Dismissed

By the Court

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix A

Order On Motion to Vacate Superior Court of Connecticut's Final Judgment Due to Lack of Due Process of Law

SC230274

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 6/4/2024 1:35:08 PM

Notice Content:

Motion Filed: 5/24/2024
Motion Filed By: Gordon Clark
Order Date: 06/04/2024

Order: Dismissed

By the Court

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix A

Order On Motion for a Writ of Mandamus to Compel the Constitutional and Inviolate Right to a Jury Trial

SC230194

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 5/7/2023 1:31:53 PM

Notice Content:

Motion Filed: 2/29/2024
Motion Filed By: Gordon Clark
Order Date: 05/07/2024

Order: Denied

By the Court

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix A

Order On Motion for Reconsideration En Banc of Petition for Certification

SC230195

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 5/7/2023 1:31:53 PM

Notice Content:

Motion Filed: 2/29/2024
Motion Filed By: Gordon Clark
Order Date: 05/07/2024

Order: Denied

By the Court

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix A

SUPREME COURT
STATE OF CONNECTICUT

SC-230179
SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

The defendant Gordon Clark's petition for certification to appeal from the Appellate Court (AC 46473) is denied.

Gordon Clark, self-represented, in support of the petition.
Jeffrey M. Knickerbocker, in opposition.

Decided February 20, 2024

By the Court,

/s/ Cory M. Daige

Cory M. Daige
Assistant Clerk - Appellate

Notice Sent: February 20, 2024
Petition Filed: October 3, 2023

Appendix A

Clerk, Superior Court, HHD CV19-6120472-S
Hon. Claudia A. Baio
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record

Appendix A

SUPREME COURT
STATE OF CONNECTICUT

SC-220302
SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

The defendant Gordon Clark's petition for certification to appeal from the Appellate Court (AC 45927) is denied.

Gordon Clark, self-represented, in support of the petition.
Jeffrey M. Knickerbocker, in opposition.

Decided April 4, 2023

By the Court,

/s/ Rene L. Robertson

Rene L. Robertson
Deputy Chief Clerk

Notice Sent: April 4, 2023
Petition Filed: March 7, 2023

Appendix A

Clerk, Superior Court, HHD CV19-6120472-S
Hon. Matthew J. Budzik
Clerk, Appellate Court
Reporter of Judicial Decisions
Staff Attorneys' Office
Counsel of Record

Appendix A

Appendix B

Order On Motion for Reconsideration En Banc

AC46473

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 9/13/2023 11:29:44 AM

Notice Content:

Motion Filed: 7/31/2023
Motion Filed By: Gordon Clark
Order Date: 09/13/2023

Order: Denied

By the Court
Daige, Cory M.

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix B

Order On Motion to Compel Transcript

AC46473

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 6/14/2023 11:26:54 AM

Notice Content:

Motion Filed: 5/30/2023
Motion Filed By: Gordon Clark
Order Date: 06/14/2023

Order: Denied

By the Court
Daige, Cory M.

Notice sent to Counsel of Record

Hon. Claudia A. Baio

Clerk, Superior Court, HHDCV196120472S

Appendix B

Order On Motion for Reconsideration En Banc

AC45927

SANTANDER BANK, N.A.
v.
LILLIAN J. CLARK ET AL.

Notice Issued: 2/15/2023 12:12:43 PM

Notice Content:

Motion Filed: 1/17/2023
Motion Filed By: Gordon Clark
Order Date: 02/15/2023

Order: Denied

By the Court
Robertson, Rene L.

Notice sent to Counsel of Record

Hon. Matthew J. Budzik

Clerk, Superior Court, HHDCV196120472S

Appendix B

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT
	JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	4/25/2023

ORDER

ORDER REGARDING:
05/24/2022 205.00 MOTION FOR JUDGMENT IN ACCORDANCE WITH OPINION OF SUPREME COURT

The foregoing, having been considered by the Court, is hereby:
ORDER: DENIED

The Motion: submitted by the defendant is incomprehensible, cites to law that is not relevant to this proceeding, and it is unclear what relief the defendant is seeking from this court as any valid relief that would fall within the jurisdiction of this court. The motion also appears to be duplicative of other pleadings filed by the defendant and adjudicated.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	4/25/2023

ORDER

ORDER REGARDING:
03/15/2023 247.00 MOTION FOR ORDER OF COMPLIANCE – PB SEC 13-14 (INTERR/PROD – 13-6/13-9)

The foregoing, having been considered by the Court, is hereby:
ORDER: GRANTED

Compliance ordered on or before May 1, 2023. If the moving party does not receive compliance by that date, the moving party may file a Motion for Judgment of Default referring to this order. Absent proof of compliance on file before the motion appears on this short calendar, the motion will be granted by the Court and judgment will enter.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT
	JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	4/25/2023

ORDER

ORDER REGARDING:
06/27/2022 221.00 MOTION FOR ORDER
OF COMPLIANCE – PB SEC 13-14
(INTERR/PROD – 13-6/13-9)

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Superior Court Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	4/25/2023

ORDER

ORDER REGARDING:
06/28/2022 222.00 OBJECTION RE DISCOVERY OR DISCLOSURE

The foregoing, having been considered by the Court, is hereby:

ORDER: SUSTAINED

Superior Court Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/1/2023

ORDER

ORDER REGARDING:
04/17/2023 253.00 OBJECTION

The foregoing, having been considered by the Court, is hereby:

ORDER: OVERRULED

Superior Court Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT
	JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/1/2023

ORDER

ORDER REGARDING:
04/17/2023 255.00 MOTION TO STRIKE

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Superior Court Results Automated Mailing (SCRAM) Notice was sent on the underlying motion.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/2/2023

ORDER

ORDER REGARDING:
04/17/2023 256.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT
	JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/2/2023

ORDER

ORDER REGARDING:
04/17/2023 257.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/2/2023

ORDER

ORDER REGARDING:
04/26/2023 263.00 MOTION TO REARGUE/RECONSIDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/2/2023

ORDER

ORDER REGARDING:
04/28/2023 272.00 MOTION TO STRIKE

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/2/2023

ORDER

ORDER REGARDING:
05/1/2023 275.00 OBJECTION TO MOTION

The foregoing, having been considered by the Court, is hereby:

ORDER: SUSTAINED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/2/2023

ORDER

ORDER REGARDING:
05/2/2023 281.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/3/2023

ORDER

ORDER REGARDING:
05/1/2023 276.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER: GRANTED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT
	JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/3/2023

ORDER

ORDER REGARDING:
05/3/2023 283.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/3/2023

ORDER

ORDER REGARDING:
05/3/2023 284.00 OBJECTION

The foregoing, having been considered by the Court, is hereby:

ORDER: OVERRULED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix C

Order 439589

HHD-CV-19-6120472-S	SUPERIOR COURT
	JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	5/3/2023

ORDER

ORDER REGARDING:
05/3/2023 285.00 MOTION FOR ORDER

The foregoing, having been considered by the Court, is hereby:

ORDER: DENIED

Per oral record.

Judicial Notice (JDNO) was sent regarding this order.

Judge: CLAUDIA A BAIO (439589)

Appendix D

HHD-CV-19-6120472-S	SUPERIOR COURT
	JUDICIAL
SANTANDER BANK, N.A.	DISTRICT OF
V.	HARTFORD
LILLIAN J. CLARK, ET AL.	MAY 19, 2023

MEMORANDUM OF DECISION AFTER TRIAL

The trial was held before the court in this matter in the virtual courtroom on May 2, 3 and 4, 2023. Both parties appeared. The plaintiff was represented by counsel; the defendant, Gordon Clark, represented himself.

In reaching its conclusions, the court has carefully and fully considered and weighed all of the evidence received at the trial; evaluated the credibility of the witnesses; assessed the weight, if any, to .be given specific evidence and measured the probative force of conflicting evidence; reviewed all exhibits, relevant statutes, and case law; and has drawn such inferences from the evidence, or facts established by the evidence, that it deems reasonable and logical. The court makes the following findings and renders the following decision.

I. PROCEDURAL BACKGROUND AND FACTS

The plaintiff commenced this action by way of a two count complaint, the first count seeking reformation of the mortgage to correct the alleged mutual

mistake made by the parties by not attaching the property description to the mortgage and the second for foreclosure of a mortgage encumbering single real property located at 70 Elm St., Enfield, Connecticut. The borrower on the note and mortgagor was Lillian Clark. Following the commencement of this action, Lillian passed away. Her husband and executor of her estate, Gordon Clark, remains a defendant in this matter and appeared throughout the proceedings and at the trial. The action was commenced based upon a claimed default in payment on the note for the missed payment due for June 2019. Payment was rendered on June 10, 2019 but was reversed due to insufficient funds in the account on which the check was written. The evidence supports that no subsequent payment was made. There was extensive evidence presented relating to delinquent taxes and the amount of the taxes on the property that were delinquent, paid by the plaintiff in accordance with the option permitted under the terms of the note, and never reimbursed by the defendant.

The defendant has asserted 30 special defenses and 2 counterclaims.[1] The plaintiff filed a reply to the special defenses including raising matters in avoidance and an answer to the counterclaims. Additional facts found by the court will be set forth as necessary and relevant to the discussion that follows.

As noted, the matter proceeded to trial on May 2, 3 and 4, 2023.[2]

Appendix D

II. DISCUSSION

A. PLAINTIFF'S COMPLAINT

1. COUNT ONE: REFORMATION

The court first addresses the first count of the plaintiff's complaint, the count for reformation. From the evidence presented, the following facts are found. On March 21, 2008, Lillian Clark executed, in connection with a home equity line of credit loan, a note in the amount of $100,000 payable to the order of Sovereign Bank with interest from that date in monthly installments of principal and interest.

On that same date, Lillian Clark executed a deed to secure the note mortgage to Sovereign Bank (now Santander Bank)[3] for the premises known as 70 Elm St., Enfield, Connecticut. The mortgage deed was recorded on the Enfield land records on April 7, 2008 in volume 2392, page 47. The mortgage deed correctly identified the secured premises by its street address. However, no property description was attached to the mortgage deed. All closing documents which included, in addition to the note and mortgage deed, the proof of hazard insurance and limited title affidavit among other documents, correctly identify the subject property. Exhibits were admitted into evidence at the time of trial which clearly support the consistent reference to the 70 Elm St., Enfield, Connecticut address throughout those closing documents relating to the note and mortgage. The documents were all appropriately signed by defendant Lillian Clark.

Appendix D

Included in those closing documents, related to the Home Equity Line of Credit loan at issue, were documents confirming express requests by the borrower, Lillian Clark, that debts encumbering the property be paid out of the proceeds of this new loan. The evidence also establishes that this is the only property that Ms. Clark owned in Enfield Connecticut.

"A cause of action for reformation of a contract rests on the equitable theory that the instrument sought to be reformed does not conform. to the real contract agreed upon and does not express the intention of the parties and that it was executed as the result of mutual mistake or mistake of one party coupled with actual or constructive fraud, or in equitable conduct on the part of the other ... Reformation is not granted for the purpose of alleviating a hard or oppressive bargain, but rather to restate the intended terms of an agreement when the writing that memorializes that agreement-is at variance with the intent of the parties ... Equity evolved to the doctrine because an action at law afforded no relief against an instrument secured by fraud or as a result of mutual mistake. (Citations omitted; internal quotation-marks omitted.)" Lopinto v. Haynes, 185 Conn. 527, 531 - 32,441 A. 2d 151 (1981). "Reformation is appropriate in cases of mutual mistake that is where, in reducing to writing an agreement made or transaction entered into as intended by the parties thereto, through mistake, common to both parties, the written instrument fails to express the real agreement or transaction ... [Reformation is also available in equity when the instrument does not

express the true intent of the parties owing to mistake of one party coupled with fraud, actual or constructive, or inequitable conduct on the part of the other. (Citations omitted; internal quotation marks omitted.)" Hartsch v. Metropolitan Property & Liability Insurance Co., 221 Conn. 185, 190 - 91, 602 A 2d 1007 (1992).

Where the property at issue is identified in the note and mortgage, and in particular, as here, were all of the other documents clearly reflect the intent of the parties-to use the property at issue as collateral for the loan, the only reasonable explanation for the lack of the property description being appended is mutual mistake. Accordingly, reformation is available in order to ensure that the clear intent of both the parties is achieved.

The evidence demonstrates here that the borrower, Lillian Clark, executed the note, mortgage deed, credit application, title affidavit, requests for discharge of two deaths associated with the property and hazard insurance proof at the closing associated with this loan. The evidence clearly supports that the borrower intended the subject property to secure this loan; No credible evidence was offered by the defendant to call these facts into question.

The defendant raises an issue of the use of Lillian Clark's maiden name, Lillian Byron, claiming that somehow the use of this name caused confusion. However, as was demonstrated to the evidence presented at the trial, the initial deed to the property

to the decedent borrower was to Lillian Byron from Alfred Byron who, based upon the evidence presented in the repeated reference by the defendant during the course of his presentation as well, is Lillian's father who deeded the property to her in 1968. As also reflected through the evidence, Lillian Byron changed her name to Lillian Clark (see Exhibit 15) and that was recorded on the land records.

From the evidence presented, the plaintiff has met its burden of proof by a fair preponderance of the evidence on count one of the complaint, the reformation count, and judgment is entered in favor of the plaintiff on said count.

Having found in favor of the plaintiff on the reformation count, the court now turns to count two, foreclosure on the reformed mortgage.

2. COUNT TWO: FORECLOSURE

The foreclosing party must demonstrate that all conditions precedent to. foreclosure, as mandated by the note and mortgage, have been satisfied. See Bank of America, FSB v. Hanlon, 65 Conn. App. 577, 581, 783 A.2d. 88 (2001), abrogated on other grounds by McClancy v. Bank of America, N.A., 176 Conn. App. 408, 413, n. 5, 168 A.3d 658 (2017). To establish a prima facie case, the mortgagee must prove by a preponderance of the evidence that: (1) it was the owner of the note at the time it commenced the action; and (2) the mortgagors defaulted on their

obligations under the note. See HSBC Bank USA, National Association v. Karlen, 195 Conn. App. 170,176,223 A. 3d 857 (2020); Deutsche Bank National Trust v. Bliss, 159 Conn. App. 483, 4951 124 A.3d 890, cert. denied, 320 Conn. 903, 127 A.3d 186 (2015); Franklin Credit Management Corp. v Nicholas, 73 Conn. App. 830, 838, 812 A. 2d 51 (2002), cert. denied 262 Conn. 937, 815 A. 2d 136 (2003). When a holder seeks to enforce a note through foreclosure, the holder must produce the note. The note must be sufficiently endorsed so as to demonstrate that the foreclosing party is a holder, either by a specific endorsement to that party or by means of a blank endorsement to bearer." Hudson City Savings Bank v. Hellman, 196 Conn. App. 836, 852, .231 A.3d 182 (2020) citing Wells Fargo Bank, N.A. v. Henderson, 175 Conn. App. 474, 483, 167 A.3d 1065 (2017). "[A] holder of a note is presumed to be the owner of the debt, and unless the presumption is rebutted, may foreclose the mortgage under § 49-17." Equity One, Inc. v. Shivers, 310 Conn. 119, 135, 74 A.3d 1225 (2013) overruled on other grounds by U.S. Bank National Assn. v. Crawford, 333 Conn. 731, 759, 219 A.3d 744 (2019). "In order to rebut the presumption, the defendant must prove that someone else is the owner of the note and debt. Absent that proof, the plaintiff may rest its standing to foreclose on its status as the holder of the note." U.S. Bank, N.A. v. Schaeffer, 160 Conn. App. 138, 150, 125 A.3d 262 (2015).

The court finds that the plaintiff has met its burden of proof by a fair preponderance of the evidence to satisfy all of the elements necessary to establish a

prima facie case. The evidence establishes that the plaintiff is the holder of the original note, was the originating lender under a different name which had since been changed appropriately, the defendant mortgagor had defaulted on the note and the conditions precedent to the foreclosure have been satisfied by the plaintiff. Having found that the plaintiff has met its burden of proof, the court now turns to the defendant's special defenses.

B. DEFENDANT'S SPECIAL DEFENSES

"'Only after [the] initial burden is met, does the court then determine whether any special defenses alleged are legally sufficient to defeat a claim of foreclosure. Bank of New York v Conway [50 Conn Sup. 189], 195 [2006]" FEC Enterprises, LLC. v. Lin Mare, LLC., et al Superior Court, judicial district of Hartford, Docket No. CV-15-6060522-S, 2018 WL 1177011 (February 5, 2018, Dubay, J.). "[O]nce the plaintiff has established its prima facie case; the court will render judgment in its favor unless the defendants have established a valid special defense to the action." Franklin Credit Management Corp. v. Nicholas, Superior Court, judicial district of New London, Docket No. CV-98-0546721S (July 21, 2001, Hurley, J.), aff'd, 73 Conn. App. 830, 812 A. 2d 51 (2002), cert. denied, 262 Conn. 937, 815 A. 2d 136 (2003).

"[A] special defense is not an independent action; rather, it is an attempt to plead facts that are consistent with the allegations of the complaint to

demonstrate, nonetheless, that the plaintiff has no cause of action." (Internal quotation marks omitted.) Valentine v. LaBow, 95 Conn. App. 436, 447 n.10, 897 A.2d 624 (2005), cert. denied, 280 Conn. 933, 909 A.2d 963 (2006). The defendant bears the burden of proving the allegations in his special defenses by a fair preponderance of the evidence. Lodovico v. Mihalcik, Superior Court, judicial district of Hartford, Docket No. CV-07-5013091-S (August 17, 2010, Rittenband, J.T.R.). Although the defendants may rely upon more than one special defense, they need only establish one in order to defeat a finding of liability. See Union Trust Co. v. Jackson, 42 Conn. App. 413,417,679 A.2d 421 (1996).

"Historically, defenses to a foreclosure action have been limited to payment, discharge, release or satisfaction ... A valid special defense at law to a foreclosure proceeding must be legally sufficient and address the making, validity or enforcement of the mortgage, the note or both ... Where the plaintiff's conduct is inequitable, a court may withhold foreclosure on equitable considerations and principles ; .. [O]ur courts have permitted several equitable defenses to a foreclosure action. [I]f the mortgagor is prevented by accident, mistake or fraud, from fulfilling a condition of the mortgage, foreclosure cannot be had ... Other equitable defenses that our Supreme Court has recognized in foreclosure actions include unconscionability ... abandonment of security ... and usury." (Citations omitted; internal quotation marks omitted.) LaSalle National Bank v. Freshfield Meadows, LLC, 69 Conn. App. 824, 833-834, 798 A.2d 445 (2002); see

also tis. National Bank Assn. v Blowers, 332 Conn. 656, 212 A. 3d. 226 (2019); TD Bank, N.A. v. J & M Holdings, LLC, 143 Conn. App. 340,343, 70 A.3d 156 (2013). "A proper construction of 'enforcement' includes allegations of harm resulting from a mortgagee's wrongful post origination conduct in negotiating loan modifications, when such conduct is alleged to have materially added to the debt and substantially prevented the mortgagor from curing the default." U.S. Bank Nat'l Ass'n v. Blowers, supra, 667.

As set forth above, the defendant has filed a number of special defenses and two counterclaims. Specifically, the defendant has raised the following special defenses in his answer to the plaintiff's complaint captioned as follows:

1. failure to join indispensable party;
2. admitted/invalid/defective/unenforceable alleged mortgage;
3. defendant is valid, secured and enforceable first lien position;
4. accord and satisfaction;
5. consent;
6. negligence;
7. contributory negligence;
8. promissory estoppel; .
9. equitable estoppel;
10. laches;
11. failure to state a claim upon which relief can be granted;

12. financial fraud;
13. mortgage fraud;
14. mail fraud;
15. lack of standing;
16. lack of subject matter jurisdiction;
17. payment;
18. multiple breaches of contract;
19. multiple breaches of novated (oral) contract;
20. release;
21. discharge;
22. waiver;
23. sham complaint;
24. statute of frauds;
25. statute of limitations;
26. illegality;
27. abandonment of alleged security;
28. unclean hands;
29. violation of the fair debt collection practices act;
30. violation of the Connecticut Unfair Trade Practices Act.

(Docket entry #196)

The court finds that the defendant has failed to meet his burden of proof as to any of the special defenses raised. The defendant's pleading consisting of his answer, special defenses and counterclaims is somewhat difficult to navigate. Some of what are included as special defenses do not set forth a cognizable special defense. However, as they remain in the defendants pleading and have not been subject

to a motion to strike, the court makes findings as to all the court notes that there is significant overlap in the various special defenses.

A number of the special defenses rely upon the claim that there is no property description appended to the mortgage and/or the use of the borrower's prior name of Lillian Byron as opposed to Lillian Clark in some prior correspondence sent by the lender to the borrower and which correspondence was not admitted into evidence. See second, third, eleventh, thirteenth, fifteenth, sixteenth, twenty-third and twenty-fourth special defenses and including, in part, the twelfth special defense. As noted above, this court has already found in favor of the plaintiff on the reformation count (count one of the complaints) and has already found credible the evidence relating to the name change from Lillian Byron to Lillian Clark, noting that the two names refer to one and the same person. The exhibit offered by the plaintiff, exhibit 15, was admitted into evidence without objection.[4]

Several of the special defenses are based upon the claim that there was an oral agreement made between the defendant and some representative at a local branch of Santander Bank that the defendant could "pay back when you can." See fourth, fifth, eighth, ninth, nineteenth, twentieth, twenty-first and twenty-second special defenses. The defendant has failed to meet the burden of proof as it relates to these special defenses. Essentially, the defendant maintains that there was an oral modification of the

agreement or a new contract. The law is clear under our Connecticut Statute of Frauds, General Statutes §52-550(a) that oral agreements relating to real estate are not valid. Any such agreement must be in writing. This includes loan modifications. See e.g., Deutsche Bank Trust Company Americas v. DeGennaro, 149 Conn. App. 784, 788, 89 A. 3d 969 (2014); Union Trust Co. v Jackson, 41 Conn App. 413, 419, supra.[5]

In the seventeenth special defense, the defendant maintains that, among other things, the borrower was current on the property taxes as of May 1, 2022. This is not consistent with the evidence that was presented. The evidence was uncontroverted that the taxes were paid by the bank with no repayment by the borrower. No evidence to the contrary was offered at trial.

Additionally, in the first special defense, the defendant submits that there was a failure to join an indispensable party, specifically, the estate of Lillian Clark, following her death which occurred after the action had already been commenced. However, it is not the estate that would be the proper party to this action. If a motion to substitute were filed, it would have been for the administrator/executor of the estate. The defendant, Gordon Clark, has been a defendant in this action from its commencement. By his own concession throughout his pleadings and arguments, he is the executor and sole beneficiary of Lillian Clark's estate. The plaintiff is not required to file a motion to substitute. The identical issue was

addressed by the court in denying the defendant's motion to dismiss (Docket entry #22) and is addressed in the court's Memorandum of Decision issued September 29, 2022, Docket entry #231 and cases cited therein.

The twelfth special defense, which relates in part to the claim that there was a lack of a property description appended to the mortgage, also claims financial fraud involving the history of Santander Bank generally and with no evidence offered that related specifically to any claims of fraud as it relates to this matter directly. No admissible evidence was presented by the defendant. Finally, the defendant claims to have a first lien position with regard to a $300,000 lien. No evidence whatsoever was offered by the defendant to support the claim of this lien.

As to the remainder of the special defenses, there was simply no evidence offered to support the defenses raised. Consequently, the court finds that the defendant has failed to meet his burden of proof as it relates to the special defenses.[6]

The plaintiff has pleaded matters in avoidance as follows:

Pursuant to Practice Book § 10-57, Plaintiff pleads the following matters in avoidance.

1. As to all special defenses, Defendant's breach of the obligations under the Note and

Mortgage are fatal to Defendant's alleged defenses.

2. Defendant's failure to pay taxes when due and failure to offer deed in lieu preclude Defendant from seeking any set-off.

Docket entry #202.

In light of the court's decision as it relates to the defendant's special defenses, the court need not address these matters in avoidance. However, the court does find that the evidence supports the plaintiff's allegations contained therein.

C. COUNTERCLAIMS

The court now turns to the defendant's counterclaims. The defendant has asserted two counterclaims: Count One, captioned Quiet Title and Count Two, captioned Violations of the Connecticut Unfair Trade Practices Act. The defendant has failed to offer evidence to meet the burden of proof as to each of these two claims.

III. CONCLUSION

For the foregoing reasons, the court enters judgment in favor of Santander Bank as the plaintiff on the two counts of its complaint and for Santander Bank as the counterclaim defendant on the two counterclaims.

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As to Count Two of the complaint, a judgment of foreclosure by sale shall enter for the plaintiff. The debt is found to be $139,364:60 as of May 2, 2023 broken down as follows:

Principal Balance: $80,897.23
Interest (through May 2, 2023): $12,610.98
Pre-acceleration Late Charges: $128.31
Tax Advances: $45,051.08
Annual fees: $150.00
NSF fees: $65.00

With a per diem interest rate accruing after that date of $16.05
The fair market value of the property as of April 17, 2023, is $205,000.00, of which $40,000.00 is attributable to the site and $165,000.00 is attributable to the improvements thereon.

Attorney's fees are awarded in the amount of $27,187.50. Costs are awarded as follows: Appraiser fees of $630.00 and title search fee of $225.00.
The sale date will be set for August 26, 2023 (Bar date is July 12, 2023). The clerk will send out a separate notice relating to the sale.

BY THE COURT

/s/ Claudia A. Baio

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CLAUDIA A. BAIO, JUDGE

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1 The defendant has included subcaptions of special defense in his counterclaims but has not asserted any additional special defenses in the subcaptioned portion of the counterclaim.

2 The defendant filed a number of pleadings on the eve of and during the trial and also claimed for the first time to the short calendar for the day immediately preceding the trial some pending motions that had been recently filed prior to trial. The plaintiff filed several in response. Each of those pleadings was addressed on the record during the trial. Orders were issued as to each noting for those addressed on the record, that the order was issuing per the oral record. See e.g. Defendant's Motion to Strike Certificate of Closed Pleadings filed 4/17/2023, Docket entry #255, Order entered 5/1/2023, Docket entry #255.86; Defendant's Motion for Order of Sanctions filed 4/17/2023, Docket entry #256, Order entered 5/2/2023, Docket entry #256.86; Defendant's Motion for Order of Continuance filed 4/17/2023, Docket entry .#257, Order entered 5/2/2023, Docket entry #257.86; Defendant's Motion to Reargue filed 4/26/2023, Docket entry #263, Order entered 5/2/2023, Docket entry #263.86; Plaintiff's Motion to Strike (late filed jury claim) filed 4/28/2023 Docket entry #272, Order entered 5/2/2023, Docket entry #272.86; Defendant's Notice of Interrogatories and Notices of Deposition filed 4/28/2023, Docket entry #274, Order entered 5/2/2023, Docket entry #274.86; Plaintiff's objections to motions ##255, 256, 257 and 263 filed 5/1/2023, Docket entry #275, Order entered 5/2/2023, Docket entry #275.86; Defendant's Notice of 5/1/2023 Appeal filed 5/2/2023, Plaintiff's 5/2/2023 Motion for Order finding no appellate stay as a result of the appeal filed 5/1/2023, Docket entry #281, Order entered 5/2/2023, Docket entry #281.86; Defendant's Motion for Emergency Order for Subpoena filed 5/3/2023, Docket entry #283, Order issued 5/3/2023, Docket entry #283.86; Defendant's Objection related to exhibits, witness list and TMC report filed 5/3/2023, Docket entry #284, Order- issued 5/3/2023, Docket-entry #284.86; Defendant's Motion for Sanctions filed 5/3/□023, Docket entry #285, Order issued 5/3/2023, Order #285.86.

3 Sovereign Bank merged into and became known as Santander Bank, N. A.

4 In fact, the defendant included as one of his exhibits to his answer, special defenses and counterclaim, the exact name change affidavit offered by the plaintiff as an exhibit. See Docket entry #196, Exhibit A.

5 It is noteworthy that the defendant raises the issue of the Connecticut Statute of Frauds in his twenty-fourth special defense, relying upon the argument that there was no written property description attached to the mortgage, yet seeks to rely upon an oral agreement relating to the same debt set forth in the note and secured by the mortgage.

6 The remaining special defenses that fall under this conclusion of the court include the first, sixth, seventh, tenth, twelfth (addressed in part above) fourteenth, eighteenth and twenty-fifth through thirtieth special defenses. Also, although the defendant makes reference to subject matter jurisdiction in the several of the special defenses including the fifteenth and sixteenth special defenses, issues raised with regard to that claim have previously been addressed by this court in ruling on motions previously filed by the defendant. .See, e.g., Motion to Dismiss, Docket entry #106, denied by the court, Taylor, J., on March 3, 2040, Docket entry #106.86; Motion to Strike (Original motion Docket entry #154) amended motion, Docket entry #175, denied by the court, Taylor, J., by order dated March 29, 2022, Docket entry #175.86; Motion to Dismiss (addressing in personam jurisdiction, Docket entry #226, denied by the court (Baio, J.) by order dated 9/29/2023, Memorandum of Decision #231. Further, to the extent they are based upon the claim that there was no valid property description, that issue already addressed by this court in determining the plaintiff's claim for reformation as well as in the discussion within this decision relating to those relevant special defenses.

Appendix E

The Backstory Behind Judge Richard Posner's Retirement

Judge Posner had some very specific reasons for his surprise retirement from the bench.

By DAVID LAT
September 7, 2017 at 1:44 PM

In May, when I had lunch with Judge Richard Posner and his clerks in Chicago, the esteemed jurist was in fine form, as enjoyable a conversationalist as ever.

In July — after he made controversial comments about aging federal judges, including a call for a mandatory retirement age of 80 — I asked him whether he'd apply that rule to himself. He kept his options open, telling me, "It will depend on how I feel [when I turn 80], both in terms of physical and particularly mental health and in terms of interest in the job."

So like much of the legal world, I was taken by surprise when Judge Posner, currently 78, announced his retirement from the Seventh Circuit. He announced the news right before Labor Day weekend, and it took effect immediately.

And it's a *total* retirement, not the usual move to senior status (a sort of quasi-retirement for federal judges), as I learned when we traded emails earlier this week. I wrote:

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Hi Dick. Congratulations on your retirement — major news in the legal world, of course!

I haven't been able to glean this from what I've read so far (although I haven't read everything on the news, having just returned from vacation), but I was wondering: will you be taking senior status and still hearing cases, or are you departing from the Seventh Circuit completely?

He responded:

Nice to hear from you, David. And I'm not taking senior status; my departure is total. ***It has to do with fact that I don't think the court is treating the pro se appellants fairly, and none of the other judges agrees with me (or rather, they don't like the pro se's and don't want to do anything with them, with occasional exceptions only).***

I wasn't sure if Judge Posner's comments on pro se litigants were fair game for public discussion — but now they are, thanks to this Chicago Daily Law Bulletin piece:

[Judge Posner] intended to stay on the Chicago-based 7th Circuit until he turned 80... [b]ut "difficulty" with his colleague... moved up that date.

"I was not getting along with the other judges because I was (and am) very concerned about

how the court treats pro se litigants, who I believe deserve a better shake," *Posner wrote*

About 55 percent to 60 percent of the litigants who file appeals with the 7th Circuit represent themselves without lawyers. Very few pro se litigants are provided the opportunity to argue their cases in court. The 7th Circuit rules on most of those cases based on the briefs.

Posner has long been concerned about the plight of pro se litigants. Back in 2015, for example, he benchslapped a trial judge for mistreating a pro se plaintiff.

If you're interested in learning more about Judge Posner's problems with the Seventh Circuit's treatment of pro se litigants, stay tuned:

Posner wrote that he has a book coming out soon that explains his views on the topic — as well as the views of his former colleagues — "in considerable detail."

Now *that* should be a juicy read! Judge Posner is famously candid, so don't expect him to go easy on ex-colleagues he disagrees with.

I followed up with Judge Posner and asked how his stepping down would advance the cause of pro se litigants at the Seventh Circuit. **Wouldn't it be better for him to remain on the court and**

continue to advocate for their improved treatment?

Alas, it's a lost cause, in his view: "I had zero support from the other judges; I was a voice crying in the wilderness."

I also asked Posner whether he felt, in light of his comments about superannuated federal judges, whether he himself has been affected negatively by aging. He replied, in Posnerian fashion, "I think there should be compulsory retirement for all federal judges and Justices at age 80; I am as yet a mere child of 78.5."

Judge Posner, you will be missed. I don't know that I'd want a judiciary full of Richard Posners, but it sure was great to have one.

David Lat is a lawyer turned writer. He publishes Original Jurisdiction, a newsletter on Substack about law and legal affairs, and he writes for newspapers and magazines, including the New York Times, Washington Post, and Wall Street Journal. Prior to launching Original Jurisdiction, David founded Above the Law, one of the nation's most widely read legal news websites, and Underneath Their Robes, a popular blog about federal judges that he wrote under a pseudonym. He is also the author of a novel set in the world of the federal courts, Supreme Ambitions. **Before entering the media world, David worked as a federal prosecutor in Newark, New Jersey; a**

litigation associate at Wachtell, Lipton, Rosen & Katz, in New York; and a law clerk to Judge Diarmuid F. O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit. David graduated from Harvard College and Yale Law School, where he served as an editor of the Yale Law Journal.

https://abovethelaw.com/2017/09/the-backstory-behind-judge-richard-posners-retirement/?rf=1

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Appendix F

CAPTURED

The Corporate Infiltration of American Democracy

United States Senator Sheldon Whitehouse

CHAPTER 9
Capture of the Civil Jury

UNSHACKLED FROM THE CHAINS of campaign finance limits, corporate power marauds across our politics. That power has set its sights on bending a wide range of policies to its advantage, everything from corporate taxes to safety regulation. It has also set its sights on a target that is one of the fundamental constitutional pillars of our government: the civil jury.

The civil jury has a unique role in our uniquely American constitutional system. In the United States, a civil jury determines the facts and decides fault in non-criminal trials, ranging from property disputes between neighbors to multimillion-dollar class-action lawsuits against corporate behemoths. The Founders deliberately built this institution into the system of government established by our Constitution and Bill of Rights. Alexis de Tocqueville, in his Democracy in America, observed that the jury should be understood as a "political institution" and "one form of the sovereignty of the people." It gives ordinary citizens direct exercise of an American constitutional power. It is the element in our constitutional system most dedicated to

protecting ordinary citizens from the wealthy and powerful. Corporate political machinery, by seeking to undermine the civil jury and change the very structure of our system of government, shows the extent of its ambitions.

You may think of the civil jury as an annoyance. You may think of jury duty, and what a bother a jury summons can be. But consider why the Founders prized the institution of the civil jury so highly and defended it so fiercely.

The earliest tendrils of the jury system appeared in England way back in the twelfth century. By the fifteenth century, civil juries had blossomed into their modern form: independent persons who gathered together and heard witness testimony presented by opposing counsel, and then had the power of decision. It was an original form of "power to the people" and local decision making. When the earliest colonial settlers came from England to this land, they transplanted juries here: by 1624, juries were established in Virginia; by 1628, in Massachusetts; by 1677, in New Jersey; and by 1682, in Pennsylvania.

Civil juries provided a treasured means of self-governance to colonial Americans as they chafed under British rule. Efforts by the British government to interfere with American juries helped foment the American Revolution. We know those early American forefathers cared about this, because they said so. In the Declaration of Independence itself, when the

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Founders protested Britain's "history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States," they singled out that Britain had been "depriving us in many cases, of the benefits of Trial by Jury."

When our original Constitution was silent on the civil jury, Americans sounded the alarm and the Seventh Amendment, putting the civil jury right into the Constitution, was promptly sent to the states in the Bill of Rights. Alexander Hamilton described the importance of juries in Federalist No. 83: "The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government." "Representative government and trial by jury are the heart and lungs of liberty," wrote John Adams. The jury was a big deal to the Founding generation.

Sir William Blackstone was the best-known jurist in England and America at the time of the Revolution and the author of Commentaries on the Laws of England, probably the most widely available legal text in the colonies (still often cited today by American courts). Blackstone gave the two major arguments for trial by jury in one sentence: trial by jury, he said, "preserves in the hands of the people that share which they ought to have in the

administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens."

Let's start with the first argument. Colonial Americans understood the civil jury to be a means of directing power to the people and recognized Sir William Blackstone's 1768 warning that "every new tribunal erected, for the decision of facts, without the intervention of a jury ... is a step towards establishing aristocracy, the most oppressive of absolute governments." The Founders intended the civil jury to serve as an institutional check by giving ordinary American people direct control over one vital element of government – giving them, in Blackstone's words, "that share which they ought to have" in the administration of justice. The civil jury serves the constitutional purpose of dividing and disaggregating governmental power. And it does so in an immediate way, putting the people themselves as the decision makers.

On the second argument, in a Constitution largely devoted to protecting the individual against the power of the state, the civil jury is unique in that it is also designed to protect the individual against the power of other individuals. Wealth, power, and connections can give unfair advantage. Wealth, power, and connections can also influence officials in the performance of their duty. The remedy for this was to let an independent group of randomly selected members of the community decide whether someone was being treated unfairly, or in vio-lation of law.

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Because each jury is new – "a rotating cast of laypeople," as law professor Nathan Chapman puts it – it is hard to put in an institutional fix. To amplify this protection, we have made it a crime even to try: it's a criminal act to "tamper" with a jury. Contact by an interested party with a juror, unless approved by the judge in charge of the case, is forbidden. Thus does the jury prevent the "encroachments of the more powerful and wealthy citizens" who can wield influence so effectively in other arenas. In the jury, our Founders set ordinary people as our Constitution's watchman against encroachments by the powerful and wealthy.

Corporations now have become the most powerful and wealthy entities in our society, and it is often corporations whose encroachments a jury will thwart. Thus, the civil jury has become the target of sustained corporate attack. The immediate corporate wish is to reduce liability exposure. But that's only part of it. As law professor David Marcus notes, "When juries decide cases, elites lose their stranglehold on legal power" – and big corporations don't much care for institutions where an ordinary American citizen can have an equal voice and equal standing.

Big, wealthy, powerful corporations are accustomed to the benefit of enormous special influence, whether acquired through campaign contributions, traditional lobbying, regulatory capture, or the big political spending unleashed by Citizens United. They bring this influence to bear on

executive officials. They bring this influence to bear on administrative agencies. They bring it to bear on elected legislatures. They even bring it to bear on judges.

But big corporations lose the advantage of all that special influence in front of a jury. Tampering with executive, legislative, and administrative agencies is a licensed activity of special interests under our lobbying and campaign finance laws. Tampering with a jury is a crime.

The civil jury can be a potent political institution. It fosters civic engagement. It educates citizens about the workings of their government. It knits together people from all walks of life. It devolves power down to the people. It offers a final check on abuse when other institutions of government are compromised by influence. But the jury trial is now close to vanishing.

When the federal Civil Rules of Procedure were adopted in 1938, about 20 percent of federal cases were resolved by either a jury or a bench trial. Now, less than 2 percent of federal civil cases reach a jury or a bench trial. Most litigants do not have a reasonable prospect of presenting their claims to a jury of their peers. The chief judge of my home state's federal court recently told me he had not seen a civil jury trial in his courtroom for three years.

Some reasons for this trend are practical. The economics of modern legal practice press litigants

into early settlement. Judges add to this pressure their desire to manage and expedite their dockets. Jury trials are work; signing off on a settlement is easy. The growing practice of judges tolerating "paper blizzard" defense strategies rewards defendants who can bankroll aggressive and imaginative defense pretrial strategies until the plaintiff simply collapses from lack of resources before getting near a jury.

One example of this blizzard defense practice occurred in a case I brought as attorney general, where the industry defendants gave us a witness list of a hundred names. That required us to go all around the country to take these witnesses' pretrial depositions. Knowing what the other side's witnesses will say is an essential part of trial preparation, so we had no choice. At trial, the defendants called exactly zero of these witnesses. The witness list was a sham, a wild-goose chase thrown into the works of that case to waste our time and money. They got away with it.

Other changes diminishing the jury's role came via the Federal Rules of Civil Procedure. It starts with getting through the courthouse door. Corporations want this to be more difficult, and the Supreme Court as it has defined these rules has helped their cause. The Supreme Court has made it far easier for corporate defendants to dismiss cases and has helped them limit plaintiffs from gathering facts through "discovery" and from presenting their case to the jury. Recent amendments and

interpretations governing how civil trials work – pleading standards, motions to dismiss, class-action standards, summary judgment, and case management procedures – have also narrowed the gateway to a jury trial. All of these changes are to the benefit of those with money and power who tend to be defendants in civil trials, namely, corporations.

Let's say a consumer believes she was harmed by a chemical and sues the corporation that made the chemical. Before a string of corporate-friendly Supreme Court decisions over the past few decades, the consumer could file a complaint in court and would likely have the opportunity to review any evidence necessary to make her case (that's called "discovery") and then present this case to a jury. After the Supreme Court tilted the playing field in favor of civil defendants – often corporations – it is more likely that the consumer's case would be thrown out before her attorneys ever had a chance to review documents and depose witnesses. If she did make it to that point, her case would be more easily thrown out by a judge for being insufficiently persuasive before it ever reaches a jury of her peers. As Justice Stevens reminded us in his dissent in one of these decisions, the rules of federal civil procedure were intended "not to keep litigants out of court but rather to keep them in." More and more, the trend in judicial interpretation of those rules is to keep litigants out.

Class actions are a key tool for citizens to join together to sue a corporation. Small-denomination,

large-scale frauds are the stuff of class actions. A company cheats a hundred thousand people out of a hundred dollars each, and it makes a bundle. But it's not worth it for the victims to bring hundred-dollar lawsuits one by one. Hence the class action, which provides a path to a group remedy for such frauds. The Roberts Court has made it far more difficult for individual citizens who had been injured in these low-dollar, large-scale frauds to join together, bring their case before a jury, and hold corporate wrongdoers accountable.

Even where a case does get filed and begins to proceed toward a trial before a jury, a summary judgment can stop it in its tracks. In the 1980s, the Rehnquist Court issued a game-changing trio of decisions known in legal circles as the "Celotex trilogy." Traditionally, defendants had to meet a high bar to get the case thrown out at this stage, but the Celotex trilogy shifted that burden toward the plaintiff, making it much more likely that a case would get thrown out by a judge far before reaching a jury.

Courts took notice. Federal courts have cited this trilogy in astounding numbers: Anderson has been cited more than 204,000 times, Celotex more than 190,000 times, and Matsushita more than 98,000 times. Vast numbers of plaintiffs were left unable to reach a jury of their peers.

Another trend undercutting the civil jury is the addition by big corporations of arbitration

clauses into consumer contracts. We consumers never bother to read the fine print, but in the contract you signed for your cellphone, for your credit card, for your bank account, and for many other services, you likely gave away your right to a jury trial. Parallel to this trend has been a series of Supreme Court decisions through which the five conservative justices approved these contracts, again and again allowing consumer claims to be forced out of the civil courts and into arbitration.

Dissenting in the most recent of these anti-consumer Supreme Court cases, Justice Ruth Bader Ginsburg noted: "These decisions have predictably resulted in the deprivation of consumers' rights to seek redress for losses, and, turning the coin, they have insulated powerful economic interests from liability for violations of consumer-protection laws." She cited a recent series of New York Times articles exposing the severity of this problem and the intensity of the corporate effort to keep cases out of the civil court system. As Jessica Silver-Greenberg and Robert Gebeloff reported in the Times, "By inserting individual arbitration clauses into a soaring number of consumer and employment contracts, companies [have] devised a way to circumvent the courts and bar people from joining together in class-action lawsuits, realistically the only tool citizens have to fight illegal or deceitful business practices."

There are two big problems with these forced arbitration provisions. First, giving up your jury

right is not a fairly bargained choice. Credit cards and cellphones are necessities in our economy, and the contracts for those services are what lawyers would call "contracts of adhesion," contracts in which the weaker party has no real choice – take it or leave it. Second, the arbitration process lends itself to bias: it's always one-sided, big corporation against individual, and the corporation is usually a repeat player in arbitrated disputes, while each individual is usually new to the process, a one-timer. The arbitrators – very often corporate lawyers – will not want to displease the corporation, lest they not be selected for more arbitrations. So a bias emerges. State attorneys general came together and shut down the consumer arbitration work of one firm – the National Arbitration Forum – because it had become such a racket of pro-corporate bias. Before the attorneys general shuttered its practice, the firm had managed more than 214,000 consumer debt-collection claims in 2006 alone.

The corporate lust for arbitration even reaches into our international trade policy. Big corporations and industries have secured "investor-state dispute settlement" (ISDS) provisions in trade deals like NAFTA. These provisions give corporations the ability to sue nations not in court but rather before panels of arbitrators who are mostly corporate lawyers. Multinational corporations use these clauses to fight health, environmental, and safety standards established by sovereign nations that could hurt the corporate bottom line. Big nations such as the United States and Canada and Australia have all been sued. Little nations such as tiny Togo,

a sliver of a nation on the West African coast, have been threatened – in the case of Togo by the tobacco industry, whose revenues are more than six times Togo's entire gross domestic product.

A recent BuzzFeed investigation, "The Court That Rules the World," released August 28, 2016, looked at "the secret operations of these [ISDS] tribunals, and the ways that business has co-opted them to bring sovereign nations to heel." "ISDS has morphed ... into a powerful tool that corporations brandish ever more frequently, often against broad public policies that they claim crimp profits." The investigation noted "the potential use of ISDS by corporations to roll back public-interest laws, such as those banning the use of hazardous chemicals or raising the minimum wage," and as a "shield for the criminal and the corrupt." There is no similar tribunal in which environmental groups or labor unions can sue when things go the other way. The revolving door spins freely, as lawyers who negotiate the ISDS measures in treaties on behalf of the U.S. Trade Representative then go and practice law as ISDS litigators. One is the head of his firm's ISDS practice. Why would you cut back on the opportunities for your future corporate clients, who will pay you to bring the ISDS cases whose way you paved while in government?

The gradual suffocation of the American civil jury is neither random nor coincidental. Supreme Court justice Abe Fortas once noted, "Procedure is the bone structure of a democratic society." Corporations know

this. They know that procedure is power. And undermining the civil jury is a power grab. Blackstone warned that the civil jury would be a thorn in the side of the wealthy and powerful, and an annoyance to those who are used to special treatment. And it's true. There, in front of the civil jury, the wealthy and powerful have to stand annoyingly equal before the law. Their assiduously acquired influence breaks, against the hard, square corners of the jury box. As a body that "prevents the encroachments of the more powerful and wealthy," the civil jury inevitably provokes their enmity.

It should be no surprise, then, that corporations spread a mythology of greedy trial lawyers, runaway juries, abusive discovery, and preposterous verdicts, and push for "tort reform" to further insulate corporations from lawsuits for wrongdoing. It should be no surprise that corporations seek the appointment of "business-friendly" judges. And it should thus be no surprise that an already business-friendly Congress and those business-friendly judges steadily whittle away at this vital and historic American institution, the civil jury.

The cost of this institution vanishing is high. Again, you may think this is fine; what the hell, no more jury duty. But remember what we Americans lose if an institution such as this goes away. Juries are a check on political might – they disband after making their decision in a case, and consequently are hard to subject to political pressure. Juries are designed to be indifferent to wealth and power – they

are made up of random people with nothing to gain from their decision. Juries are the last hope of lost causes when other elements of government, compromised by influence, become bulwarks of well-kept indifference. Juries can blow the status quo to smithereens if they don't think it's fair. They don't care if some fat ox gets gored; their job is to do justice in the one case before them. Period. That quality is not only important in the particular case the jury is deciding; it also sends a powerful message through the whole rest of the political system.

Think about it from the big special interest's point of view. If the special interest can put the fix in everywhere in government, that offers a big prize, and that prize encourages putting in the fix. But if that prize of control can't be seized because the jury stands out there as a lonely sentinel of resistance, immune to that pressure, then the whole exercise of putting the fix in elsewhere in government becomes less alluring. If a jury can blow up the special-interest fix in government, that dials back the special interests' incentive to fix those other elements of government that yield more readily to power and wealth. It doesn't cure it, but it dials it back.

When we reflect on America and the jury, we should think about the word "corruption." The Founding Fathers thought about it a lot. Noted historian (and fellow Rhode Islander) Gordon Wood has written that, according to the republican ideals of the Founders, corruption was "a technical term of political science" of the Founding era. Americans

then saw as corruption things such as "monarchical instruments of personal influence and patronage" and "attempts by great men and their power-hungry minions to promote their private interests at the expense of the public good." Corruption had a broad political meaning to the Founders. "Any loss of independence and virtue was corruption." Corruption was the opposite of virtue, because it yielded to selfishness; it was the opposite of egalitarianism, because it allowed undue influence by some over others; and it was the opposite of independence, because it made government dependent on influence. Political dependency, writes Lawrence Lessig in Republic, Lost, was seen by the Framers as "dependence corruption."

Hamilton, writing in the Federalist Papers, discussed the "business of corruption," worried about influences "corrupting the body of the people," and warned of "instruments of foreign corruption." In their writings, the term "corruption" makes sense only if it is read as meaning far more than the simple transaction of a specific bribe. Corruption was a state of political disease; the antithesis of "corruption" was not just an absence of bribery but a "free and independent nation." "By corruption," historian Zephyr Teachout has observed, "the early generations meant excessive private interests influencing the exercise of public power."

This generous meaning has collapsed in our era. The Supreme Court has in recent decades narrowed the meaning of the term down to where

"corruption" means only a specific trade of a specific gift or benefit for a specific official favor or service. Now it means only what the Court calls "quid pro quo" corruption: tit for tat, precisely. The rest of the work of influence, the Court pretends, is free speech. It just happens to be the kind of free speech that can be practiced only by the big influencers, who in our day and age tend to be the big politically active corporations, their front groups, and their billionaire owners. And the collapse just happens to be led by the corporatists on the Court.

This is new. Legal historian Bill Novak talks about how the classical tradition running from Aristotle through Montesquieu, the sage of the Founders, had a "preoccupation" with corruption, meaning "the private capture of the public sphere." He reminds us of Socrates's definition of corruption: when "the guardians of the laws and of the government are only seemingly and not real guardians." Teachout, in her book Corruption in America, writes of how any secret influence was viewed as virtually per se corruption, and how courts once read lobbying contracts with a sharp eye to the health of the public sphere. "Courts routinely held that it was not necessary to find that the parties agreed to some 'corrupt' or 'secret' action. Instead, the question was whether the 'contract tends directly to those results.' A contract was problematic when,'" to quote a decision in a Supreme Court case from 1869, it "'furnishes a temptation to the plaintiff, to resort to corrupt means or improper devices, to influence legislative action.'"

Justice William 0. Douglas expressed a similar view, placing corruption squarely in the context of the health of the public sphere, indeed describing it as a form of "pollution" of politics: "Free and honest elections are the very foundation of our republican form of government. ... The fact that a particular form of pollution has only an indirect effect on the final election is immaterial. ... [T]he Constitution should be read as to give Congress an expansive implied power to place beyond the pale acts which, in their direct or indirect effects, impair the integrity of Congressional elections. For when corruption enters, the election is no longer free, the choice of the people is affected."

The current Court's dramatic narrowing of the definition of "corruption" has had a number of effects. The Court has stripped Congress of its power to protect elections by narrowing the definition of what it could protect against. That in turn unleashed forces of secret influence to operate with greater impunity. It also stripped prosecutors of their ability to bring corruption before a jury, absent an obvious quid pro quo bribe. Ultimately, the new, narrow definition elevated the private interest of influencers above the public interest in a healthy public sphere.

There is an eternal contest in government, between big, motivated private influencers who want a government that will yield its prizes readily to their influence and, on the other side, the public who want a government that will not yield so readily; between the players and those who just don't want to

be played. This is not a new thought. Centuries ago, Niccolo Machiavelli spoke of "two distinct parties" in a governed society: one, "the nobles [who] wish to rule and oppress the people," and two, "the people [who] do not wish to be ruled nor oppressed by the nobles." The people's object is the more "righteous," he said, for they "only desire not to be oppressed." More recently, and in our land, President Andrew Jackson's veto message regarding the rechartering of the Bank of the United States distinguished between "the rich and powerful [who] too often bend the acts of government to their selfish purposes" and "the humble members of society – the farmers, mechanics and laborers – who have neither the time nor the means of securing like favors to themselves." In our times, we see the contest less colored by class or occupation. The contest is simple: between those who want to influence, and therefore want a government that will be amenable to influence, and those who just want to go about their own lives, and would like a government that resists influence on its own so they don't have to defend themselves constantly against the influencers.

In this contest, the big influencers don't need help. They are fully motivated by greed and reward. Instead, they need restraining. The public interest in a government free of their improper influence has no similarly motivated champion – the public has "neither the time nor the means" for that. The public interest doesn't need restraint, it needs protecting. By narrowing the restraint on improper influence down to its most precise, rash, and solitary transaction – a direct "quid pro quo" bribe – the

Supreme Court took the side of the influencers. They opened up to the power of influencers space in the political sphere that was once occupied by that concept of a "free and independent nation." Indeed, the Court is so blind to this distinction that in a campaign finance decision it spoke of the importance of "unreserved communication" between a politician and his "constituents" – by which they meant not the actual constituents in the politician's district, but his donors. As a failure to appreciate the difference between the influencer class and regular citizens, that's hard to top.

The narrow quid pro quo standard gives a particular boon to those big influencers who are a constant presence in government. Those frequent fliers can now create "dependence corruption" within government to advance their interests, so long as they avoid tying any particular favor at any particular time to any particular vote. Frequent fliers have to be very stupid if they can't structure their work of influence around the quid pro quo restriction.

The one-time actor coming to Washington seeking to influence a single vote has no such advantage. As a prosecutor who has led political corruption investigations, I know how often it's the stupid, sad-sack defendant who gets clobbered, not the big interests that have learned how to work the system. In the grand scheme of things, these sad sacks are defendants with minuscule political might compared to the big forces exerting their will day to

day over government. The public is still humored with the odd corruption prosecution, but the really powerful and constant interests operate undisturbed.

The definition of "corruption" had historically in America been a jury question, and against this background, one can see why. The jury, as the Constitution's watchman against "encroachments of the more powerful and wealthy citizens," is well suited to bring its popular common sense to the definition of corruption. It is the "more powerful and wealthy" who are most likely to be the big influencers, the corrupters. So placing the jury as our public sentinel over corruption sends a powerful signal to the political class. When juries are deciding what sort of influence is honest and acceptable versus what sort of influence is excessive and against the public good, that call is in the hands of regular people. Juries are the arbitrators least likely to be either in the pocket of industry or subject to the worldview of the political class. And that's a good thing, sending a shiver of caution into the influencer class.

The Supreme Court has narrowed the field of vision of civil juries when they do hear cases involving corruption. Back when horses were the common mode of transport, leather pads called "blinkers" were often attached to the bridles beside the horses' eyes, to narrow their field of view to only what was right in front of them. By narrowing the legal definition of corruption to an explicit quid pro quo transaction, the Supreme Court narrowed the

role of the jury. If the jury is our constitutional watchman, the Court has in effect blinkered the watchman.

The Court considered one case in which a trade association made a series of gifts to a lawmaker – expensive luggage, tickets to sporting events, and more – during a time when the lawmaker had direct influence over two matters affecting the association. In an opinion by Justice Scalia, the Court held that these gifts were not illegal, even if they were intended to "buy favor or generalized goodwill" and the official was "in a position to act favorably to the giver's interests." It's not at all clear that a jury of ordinary people would agree. A jury might well think that buying ongoing influence with a lawmaker through many gifts is just as pernicious as giving one big gift in exchange for one big favor. If the Court hadn't ruled as it did, the influencer class might have to worry a bit about what a group of regular people sitting on a jury might think about a trade association, corporation, or wealthy individual buying the "favor or generalized goodwill" of a politician, and the result might be a good thing for America.

But a jury will no longer make that decision. This decision was made instead by five conservative justices, who seemed much in thrall to business interests, whose lives are remote from the daily cares and struggles of Americans, and who are profoundly ignorant of politics. Their decision has damaged the health of the public sphere in its enduring battle

with private influence. I don't think America is a better place because a group of justices gave the influencer class the ability to "buy favor or generalized goodwill" with gifts of expensive luggage and tickets to sporting events.

The Supreme Court did not just narrow corruption to direct quid pro quo exchanges, they also have narrowed what official acts they will deem bribe-worthy. Recently, the Supreme Court unanimously overturned a jury's conviction of Virginia's former governor, Bob McDonnell, who with his family accepted an array of gifts and loans, including a Rolex watch, vacations, and a big payment for his daughter's wedding, from a Richmond businessman. In one instance, the Court reported, the businessman "took Mrs. McDonnell on a shopping trip and bought her $20,000 worth of designer clothing." The Washington Post, long a witness to corruption in Washington, D.C., recently described McDonnell's case as "as hackneyed as any in America's lurid history of political graft" and his actions as "what any layman would recognize as bribery."

Beyond the quid pro quo distinction, the Court's McDonnell decision held that certain official acts didn't even count as "quids" or "quos." The businessman had wanted Virginia's state universities to perform tests on a company product. Because the governor did not formally direct such tests, the court held it was not an "official act" for the governor to help the businessman in other ways that

signaled gubernatorial favor, such as summoning university executives and researchers for meetings about the product. "In sum," Justice Roberts wrote, "an 'official act' is a decision or action on a 'question, matter, cause, suit, proceeding or controversy.' ... Setting up a meeting, talking to another official, or organizing an event (or agreeing to do so) – without more – does not fit that definition of 'official act.'" The Washington Post described the ruling in plainer terms: "the court's crabbed definition of official corruption ... provides comfort for future sticky-fingered politicians, who will find it easier to line their pockets while leading supplicants and suitors by the nose." As put by Democracy 21 president Fred Wertheimer, the decision "belies reality. If you show the facts in the case to any citizen, the citizen will conclude that the public official has sold his office for personal, financial gain."

I'm with Wertheimer. In my experience working for a governor (who did not accept Rolexes or shopping sprees), those signals of gubernatorial favor indeed make a difference. Decision makers in state agencies want pictures with the governor, they want face time with the governor, and for sure they want goodwill with the governor at budget time. When the governor's office calls or sets up the meeting, it has impact. When the governor puts people face-to-face and asks them to work something out, it has impact. The idea that you're not selling your services when you're a governor who takes a Rolex for setting up such meetings is just false. It is indeed an "act," the act of showing gubernatorial

favor in an arena where gubernatorial favor can be expected to have an impact. Obviously the problem isn't setting up the meeting or exerting the influence, because that's what governors do. It's accepting the damned Rolex and the damned shopping spree. Just accepting the damned Rolex looks reasonably enough like private influence-buying at work, done to acquire and reward the governor's official influence, that a jury ought to be allowed to make the call. Letting the big influencers and those politicians who accept their gifts run right to the chalk line, indeed to a line that looks morally out of bounds to many, is a significant (and in my view wrong) decision about the basic standards of our democracy.

Clearly, the public's trust in a political system where governors can receive Rolexes for setting up meetings, conduct that even the Court said was "tawdry" and "distasteful," was not a priority in this decision. In the age-old political contest between big influencers, who want a system to maneuver in that is amenable to their influence, and the general public, who just want to be left alone in a system they can trust to resist such tawdry influence, yet another blow was struck for the big influencers. As Fred Wertheimer said, "The court forgot about the public." And the jury's authority to draw those lines on behalf of the public was further chopped away.

While the Founders did not foresee the vast wealth, power, and influence of the modern mega-corporation and its armada of influencers, they did foresee dangerous concentrations of wealth, power,

and influence. I believe they also foresaw that virtually every element of government could be subject to influence, and even foresaw the possibility that all the great powers of government – the presidency, the Senate, and the House of Representatives – could together fall under the sway of a very powerful influence. I am confident that this grim prospect was part of their reason for protecting the jury, that last sentinel, in the Bill of Rights.

If you think this talk about influence is just a lot of political science hooey and doesn't matter in your real life, think about what is happening in Congress. Look first at whose priorities get attention. The things that matter a lot to regular people are pretty clear: student loans and the massive debt that results; getting something done on climate change before it's too late; cleaning up our nasty campaign finance system; stopping jobs going offshore and offshore tax-dodging schemes; fixing a still-broken health care system; getting a handle on the debt; and having a fair tax system where taxes are not just "for the little people." But these things don't matter much to most big corporations – certainly not as their lobbying presence is felt in Congress – and as a result, none of those things is getting done. It's not a coincidence. The big corporate stuff, like defense spending and extending corporate tax benefits, somehow gets done every year. And in any direct conflict between corporate and public interests, in Congress the advantage is almost always with corporations. For instance, almost every measure passed or ventured by Republicans on the House or Senate floor recently on clean air, clean water, and

climate change was an effort to roll back public protections. The House has taken more than a hundred runs at the EPA – this in a country where the public water in Flint, Michigan, was unsafe to drink.

In a nutshell: when you shrink the definition of corruption and take it away from the jury, you degrade the health of the public sphere and you empower the big, constant corporate influencers. Power shifts to the influencers and away from the public, and the agenda and possibilities in Congress shift accordingly. People then lose confidence in the health of the public sphere and become disaffected, and suspicious, and the great enterprise of American democracy suffers and falters. The only happy customers are the influencers, and we end where we began this chapter – with the "great men and their power-hungry minions who promote their private interests at the expense of the public good." The jury is a small and often overlooked institution, but damaging it – blinkering the watchman – has big consequences.

Of course, juries can be bothersome to some, and can sometimes be inconvenient. They do take effort. They require care and feeding, both figuratively and literally. But the jury is an institution that makes popular sovereignty real; an institution that checks the encroachments of the wealthy and powerful; an institution that will listen when the ears of the other branches of government are deaf to you; and an institution that brings

ordinary Americans together to make important decisions in their community. The jury is a little institution with a big, big role.