No. 24-459

IN THE

Supreme Court of the United States

GORDON ALEXANDER CLARK,

Petitioner,

v.

SANTANDER BANK, N.A.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the Petitioner correctly asserts that his procedural due process rights have been violated such that review by this Court is proper.

Whether the Petitioner has set forth a valid basis on which review by this Court is proper.

CORPORATE DISCLOSURE

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, undersigned counsel for Santander Bank, N.A. certified that the nongovernmental party, Santander Bank, N.A., in the civil action has the following parent corporation(s) and publicly held corporation(s) that own 10% or more of its stock: Santander Bank, N.A., a national bank, is a wholly owned subsidiary of Santander Holdings USA, Inc., a Virginia Corporation. Effective January 30, 2009, Banco Santander S.A. acquired all of the outstanding common stock of Sovereign Bancorp, Inc. n/k/a Santander Holdings USA, Inc. (corporate name change effective February 3, 2010).

The home office for Santander Bank, N.A., a national bank, is 824 North Market Street, Wilmington, Delaware. The principal executive office for Santander Holdings USA, Inc., a Virginia Corporation, is 75 State Street, Boston, Suffolk County, Massachusetts.

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INTRODUCTION

Santander Bank, N.A. (hereinafter, the "Plaintiff") judicially foreclosed on a borrower of a mortgage loan due to said borrower's failure to pay contractually required installment payments due under the note. The State Trial Court, the court with original jurisdiction, entered a Judgment of Foreclosure by Sale in favor of the foreclosing Plaintiff on May 19, 2023 (hereinafter, the "Judgment"). The Defendant, Gordon Clark, (hereinafter, the "Defendant") took an appeal. The appeal was dismissed by the Connecticut Appellate Court as frivolous. The Defendant filed a Petition for Certification with the Supreme Court of Connecticut. Said petition was denied.

The Defendant now seeks review of the denial of the Petition for Certification by the Supreme Court of Connecticut. The Connecticut Supreme Court's denial of the Petition is not within this Court's certiorari jurisdiction under 28 U.S. Code § 1257. The question presented by the Defendant is strictly one of state court law, it does not present a United States Constitutional question, nor does it seek to remedy a split of authorities or a pressing public interest issue and therefore should not be reviewed by the highest Court in the land.

STATEMENT OF THE CASE

The Plaintiff commenced the instant action by way of writ, summons and two count complaint dated November 19, 2019, seeking reformation of a mortgage encumbering real property located at 70 Elm Street, Enfield, Connecticut and executed by Lillian J. Clark (hereinafter, the "Borrower") on or about March 21,

2008 (hereinafter, the "Mortgage") and to foreclose said Mortgage (hereinafter, the "Action"). The Action was brought as a result of the Borrower's default of the terms of the note secured by the Mortgage by virtue of failing to remit the contractually required installment payments to the Plaintiff. The Borrower appeared in the action on or about December 19, 2019. The Defendant was named in the Action as a result of a lien that he held on the property located at 70 Elm Street, Enfield, Connecticut in the amount of $300,000.00. The Defendant also appeared in the action on or about December 19, 2019.

The Defendant and the Borrower filed a joint answer containing thirty (30) affirmative defenses (referred to in Connecticut civil practice as "special defenses") and a two (2) count counterclaim on April 29, 2022. The Plaintiff moved for summary judgment which the State Trial Court declined to enter. The Plaintiff replied to the special defenses and answered the counterclaim on May 18, 2022 and thereafter claimed the matter to the trial list on April 10, 2023. On April 26, 2023, over one (1) year from the filing of the counterclaim, the Defendant filed a claim for jury. The Plaintiff filed a motion to strike the claim for jury on April 28, 2023. The Plaintiff's motion to strike was granted by the State Trial Court on May 2, 2023.

After a full trial to the court, the State Trial Court entered the Judgment in favor of the Plaintiff finding that the Defendant had failed to meet his burden of proof as to all of the thirty (30) special defenses raised. The State Trial Court further entered judgment in the Plaintiff's favor on both counts of the Defendant's counterclaim.

An appeal followed. Connecticut's intermediary court of appellate jurisdiction, the Connecticut Appellate Court,

dismissed the appeal as frivolous by way of order dated June 13, 2023. The Defendant moved for reconsideration of the Connecticut Appellate Court's dismissal order *en banc* on July 31, 2023. The Connecticut Appellate Court denied the Defendant's motion for reconsideration by way of order September 13, 2023.

Following the denial of the motion for reconsideration *en banc,* the Defendant filed a Petition for Certification to the Connecticut Supreme Court. The Connecticut Supreme Court denied the Defendant's petition on February 20, 2024. After the Connecticut Supreme Court's denial of the Defendant's Petition for Certification, The State Trial Court thereafter, on May 9, 2024, reset the date of the foreclosure sale following the termination of the appellate stay arising from the filing of the appeal. The Defendant filed a Motion to Stay Pending Decision by the U.S. Supreme Court per Connecticut Practice Book §71-7 on September 11, 2024. The State Trial Court denied the motion on September 12, 2024. The foreclosure sale went forward on September 14, 2024 as scheduled; however, to date, the State Trial Court has not approved the results of the foreclosure sale.

REASONS TO DENY PETITION

I. This Petition is Not the Appropriate Vehicle for Determining Due Process Rights

The Fifth Amendment to the United States Constitution (incorporated and applied to the states through the Fourteenth Amendment) provides a right of due process, which includes the right of notice and the opportunity to be heard. "The fundamental requisite

of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 783 (1914). Specifically, the Defendant's claims essentially allege a deficiency in procedural due process which stem from the alleged violation of his right to a jury trial. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to and afford them an opportunity to present their objections . . . But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950). *See also Robinson v. Hanrahan*, 409 U.S. 38, 39-40, 93 S. Ct. 30, 31 (1972). "The right to trial by jury is a fundamental constitutional right. This right, however, can be waived. The test to determine whether a party has waived his right to trial by jury is less stringent than the 'intentional relinquishment or abandonment of a known right or privilege" test applicable to other constitutional rights.' (internal citations omitted) *Bellmore v. Mobile Oil Corp.*, 783 F.2d 300, 306 (2nd Cir.) (1986).

The Defendant argues that he was fundamentally denied his procedural due process rights by what he claims was the improper striking of the claim for jury trial by the State Trial Court and that he was fundamentally denied his procedural due process rights due to what he alleges was the failure of the State Trial Court to properly consider his claims. "Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits . . . What the Constitution does require is 'an opportunity . . . granted at a meaningful

time and in a meaningful manner,'" *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added), "for [a] hearing appropriate to the nature of the case, *Mullane v. Central Hanover Tr. Co.*, supra, at 313." *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 786 (1971). The Defendant had the opportunity to be heard: he filed a timely appearance in the matter and received multiple hearings, including a hearing on the claims raised in his answer, special defenses and counterclaim at the state court level. He was also provided, and availed himself of, the opportunity to appeal to the Appellate Court of Connecticut, as well as the opportunity to file a Petition for Certification to the Supreme Court of Connecticut. The Connecticut Appellate Court dismissed the appeal as frivolous and the Connecticut Supreme Court denied the Defendant's Petition for Certification on Appeal from the Connecticut Appellate Court. Not only has the Defendant completely exhausted all possible appeals for these proceedings, his constitutionally given due process rights have been fully and finally satisfied.

Furthermore, the allegations underlying the Defendant's claimed denial of due process and which he now seeks this Honorable Court relitigate are entirely controlled by Connecticut laws. Indeed, Connecticut courts have set forth that a failure to timely file a claim for jury in a contract case will result in a waiver of the right to a jury trial.

> The defendant's motion to strike challenges the timeliness of the plaintiff's claim for a jury trial. On March 5, 2021, the defendants filed their answer and special defenses to the plaintiff's complaint. On March 9, 2021, the plaintiff filed

her reply to the defendants' answer and special defenses. The defendant thereafter, on March 23, 2021, filed a Certificate of Closed Pleadings and claimed the matter for a court trial. On April 1, 2021, the plaintiff filed her claim for a jury trial. The defendant claims that the plaintiff filed her claim for jury "more than 296 days from the return date and 14 days after the issues of fact had been joined" which is beyond the time permitted by General Statutes § 52-215. Def. Mem of Law, p. 2. This court adopts its reasoning in *Diaz v. Brooks*, Superior Court, judicial district of New Haven, Docket No. CV186079127S (August 13, 2018, Wilson, J.) and grants the motion to strike.

In *Diaz*, this court stated: "Section 51-239b provides that '[i]n civil actions a jury shall be deemed waived unless requested by either party in accordance with the provisions of section 52-215.' Section 52-215 gives parties two opportunities to request a jury trial: (1) 'upon the written request of either party made to the clerk within thirty days after the return day,' and (2) 'within ten days after [an] issue of fact is joined.' It has . . . been the clear law in Connecticut since 1899 that a failure to claim a civil action to the jury within thirty days of the return date or within ten days after an issue of fact has been joined amounts to a voluntary and intentional relinquishment of the right to the jury trial provided by Art. I, § 21 of the Connecticut Constitution.' *Anastasia v. Mitsock*, Superior Court, judicial district

of New Haven, Docket No. CV-05-4012156-S (December 1, 2006, Lager, J.) (42 Conn. L. Rptr. 453, 454). Nonetheless, § 52-215 provides that a 'case may at any time be entered in the docket as a jury case by the clerk, upon written consent of all parties or by order of court.' Our Supreme Court has concluded that this provision grants trial courts the discretion to deny a motion to strike a case from the jury docket even if the jury claim was not filed within the required time period. *Falk v. Schuster*, 171 Conn. 5, 7-8, 368 A.2d 40 (1976). Superior Court judges, however, 'have exercised such discretion very sparingly.' *Barcello v. WCL Management, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-06-5000632-S (February 26, 2007, Taggart, J.). 'Trial courts . . . routinely grant motions to remove cases from the jury docket when [the jury] claim is tardy. Compliance with the clear and simple rules of § 52-215 compel such a result.' (Internal quotation marks omitted.) *Saracino v. Hartford Financial Services Group, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-05-4010041-S (April 4, 2006, Tanzer, J.) (41 Conn. L. Rptr. 152, 153); see also *Naccarelli v. Muniz,* Superior Court, judicial district of Fairfield, Docket No. CV-07-5006162-S (December 17, 2007, Frankel, J.) (44 Conn. L. Rptr. 646, 647) (noting that 'in most cases . . . a late filing of a jury claim has not been allowed' [internal quotation marks omitted]).

"'There is no appellate or statutory authority providing guidance or setting forth standards

for trial courts to utilize in deciding whether to exercise discretion under § 52-215. *Fletcher v. Mead School for Human Development, Inc.*, Superior Court, judicial district of Stamford-Norwalk, Complex Litigation Docket, Docket No. X05-CV-96-0152138-S (January 8, 2001, Tierney, J.) (28 Conn. L. Rptr. 667, 670) ('[Section] 52-215 contains no standards for the court to apply in making the determination whether any matter should be placed on the jury docket. There is no appellate court decision that sets forth standards.'). Superior Court decisions addressing whether a trial court should exercise such discretion generally consider (1) the length of the time elapsed between the close of pleadings and the filing of the jury claim, (2) whether any extenuating circumstances existed justifying the delay in filing the jury claim, and (3) whether either party would be prejudiced by the exercise of discretion. See, e.g., *Saracino v. Hartford Financial Services Group, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-05-4010041-S (April 4, 2006, Tanzer, J.) (41 Conn. L. Rptr. 152, 153); *Fletcher v. Mead School for Human Development, Inc.*, *supra*, 670-71.' *Helfant v. Yale New Haven Hospital*, Superior Court, judicial district of New Haven, Docket No. CV-08-5018960S (December 30, 2013, Nazarro, J.).

"With respect to the second consideration, 'trial courts are more likely to exercise discretion and allow a late-filed jury claim to remain on the jury docket when compelling extenuating

circumstances existed justifying the delayed filing. For example, in *Manfred v. Sheffield Laboratories*, Superior Court, judicial district of New London, Docket No. 569270 (November 10, 2005, Devine, J.), the court exercised its discretion based on the unique circumstances of the case. In that case, a self-represented plaintiff indicated her intent to proceed to a jury trial at a status conference and the court instructed her to file a claim for a jury trial. *Id.* 'The plaintiff . . . went to the clerk to file the jury claim on [the same day as the status conference], but did not have sufficient funds. She was not told that [a] credit card would be accepted by the clerk. All of the parties were aware of the plaintiff's intention to file a jury claim [on that date].' *Id.* Based on these circumstances, the court denied the defendants' motion to strike the plaintiff's jury claim. *Id.*

"Similarly, in *Skelly v. Mohawk Mountain Ski Area*, Superior Court, judicial district of Fairfield, Docket No. CV-01-0380056-S (June 18, 2002, Gallagher, J.), the court decided that an unusual set of circumstances justified a late-filed claim for a jury trial. The defendant in *Skelly* had previously received a certificate of closed pleadings from the plaintiff, in which it appeared that the plaintiff had already claimed the case for a jury trial. *Id.* Later, however, the defendant received a second certificate of closed pleadings, in which the plaintiff claimed the case for a court trial. *Id.* After receiving the second certificate of closed pleadings, the

defendant filed its jury claim within a few days. *Id.* The defendant's claim for a jury trial was filed after the statutory ten-day period prescribed in § 52-215. *Id.* The court found that 'it appears that the defendant was justified in concluding that it did not need to file a jury claim because the plaintiff had already done so' and, therefore, permitted the case to proceed to a jury trial. *Id.* "In *Nelligan v. Norwich Roman Catholic Diocese*, Superior Court, judicial district of Tolland, Complex Litigation Docket, Docket No. X07-CV-02-0084287-S (October 20, 2005, Sferrazza, J.) (40 Conn. L. Rptr. 294, 294-95), the plaintiff failed to recognize that the pleadings had closed due to an 'unusual procedural event.' 'Typically, issues are joined by a responsive pleading.' *Id.*, 295. In *Nelligan*, however, 'the pleadings were closed instead by the court's granting of a motion to strike the defendants' special defense.' *Id.* While the court noted that 'the plaintiff ought to have perceived that the pleadings were closed by the court's action' and filed a jury claim within ten days of the decision on the motion to strike, the court allowed the case to proceed to a jury trial '[u]nder these unusual circumstances.'" *Id.*

"The third and final consideration involves whether either party would be prejudiced by the court's exercise of discretion to allow a jury trial despite a late filed claim. For example, in *Fletcher v. Mead School for Human Development, Inc.*, supra, 28 Conn. L. Rptr. at 671, the court allowed a case to remain docketed

for a jury trial where the claim for a jury trial was filed fourteen days late . . . In doing so, the court noted that it 'cannot find that the defendant is prejudiced by the exercise of this discretion.' *Id.* Similarly, in the aforementioned *Nelligan v. Norwich Roman Catholic Diocese, supra*, 40 Conn. L. Rptr. at 295, the court found support for its decision to allow a jury trial despite a tardy filing in the fact that 'the defendants [could not] point to any prejudice to them except that they would prefer the economy of a shorter trial.' The prejudice consideration, however, is often not determinative, especially when the filing is very late. For example, in *Long v. Hartford Neighborhood Centers, Inc., supra*, 32 Conn. L. Rptr. at 128, the court noted that '[t]he defendants . . . [could not] articulate any particular prejudice other than the fact that they would prefer to have the case tried by the court ...' Nonetheless, the court concluded that the jury claim, which was filed over nineteen months late, was substantially tardy and granted the motion to strike the case from the jury list. *Id.*, 129." *Diaz v. Brooks, supra*, Superior Court, Docket No. CV186079127S.

In the present case, the plaintiff's claim for a jury trial was filed thirteen days late. As the court previously discussed, "[i]t is well settled that a claim for a jury trial must be filed no later than ten days after the pleadings have been closed." *Masto v. Board of Education*, 200 Conn. 482, 488, 511 A.2d 344 (1986).

"'To ascertain whether the plaintiff's claim for a jury trial [is] timely, [the court] must determine when the ten-day period began to run, that is, [w]hen . . . an issue of fact [was] joined.' General Statutes § 52-215. We have said in this context that [t]he word "when" has been construed to mean "whenever." *Noren v. Wood*, [*supra*, 98, 43 A. 649].' *Amercoat v. Transamerica Ins. Co., supra*, 165 Conn. at 732, 345 A.2d 30. We also have recognized that the issue of fact 'must be formed by the pleadings in writing. See *Avon Mfg. Co. v. Andrews*, 30 Conn. 476, 488 [1862].' *Amercoat Corporation v. Transamerica Ins. Co., supra*. Accordingly, [the court] examine[s] both the pleadings of the parties and the time frame within which they had been filed. *Home Oil Co., Inc. v. Tood*, 195 Conn. 333, 339-40, 487 A.2d 1095 (1985). Moreover, '[w]here responsive pleading is required . . . the issue is joined when the responsive pleading is filed.' *Id*., 343." *Diaz v. Brooks, supra*, Superior Court, Docket No. CV186079127S.

Here, the defendants filed their answer and special defenses to the plaintiff's complaint on March 5, 2021. The plaintiff filed her reply on March 9, 2021 at which point all issues were joined. The plaintiff did not file a claim for jury until April 1, 2021, thirteen days beyond the time required for filing the jury claim. The last pleading between the plaintiff and the defendants was the plaintiff's reply to the defendant's answer and special defenses to the plaintiff's complaint, filed on March 9, 2021.

Thus, as against the defendant the plaintiff could not properly claim a jury trial after March 19, 2021. The plaintiff filed her claim on April 1, 2021. This jury claim was filed thirteen days late. The plaintiff's delay of thirteen days clearly fails to comport with the ten-day time frame set forth in § 52-215. In determining whether to exercise discretion and allow this case to proceed to a jury trial or whether to grant the defendant's motion to strike the jury claim, the court utilizes the three considerations outlined above. The plaintiff filed an objection to the defendant's motion to strike in which she incorrectly states that the triggering date for the filing of the jury claim is the date the defendants filed their certificate of closed pleadings. Likewise, the defendants incorrectly state that the issues were joined on March 23, 2021, the date when they filed their certificate of closed pleadings and claimed the matter for a court trial. The law is clear, as previously noted, "[w]here responsive pleading is required ... the issue is joined when the responsive pleading is filed." *Id*. Thus, contrary to the plaintiff's and defendant's claim for when the ten day is triggered, the issues were joined when the plaintiff filed her reply on March 9, 2021, not on the date when the defendants filed their certificate of closed pleadings.

Moreover, notwithstanding the plaintiff's delay is only thirteen days, the plaintiff has not provided the court with any reason for her delay in filing her claim for a jury trial. Second,

the plaintiff has not presented any extenuating circumstances that would justify the delayed filing. Third, the court considers whether either party would be prejudiced by the court's exercise of discretion. The court acknowledges that the defendants have not demonstrated any prejudice in having a jury trial despite the tardy jury claim. However, because the plaintiff has failed to provide the court with any explanation for the delay, the first two considerations strongly indicate that discretion should not be exercised, and therefore, the court finds on balance, the considerations weigh in favor of granting the motion to strike the jury claim.

"In *Anastasia v. Mitsock, supra*, 42 Conn. L. Rptr. 45 supra, 42 Conn. L. Rptr. 454, Judge Lager granted the defendant's motion to strike the plaintiff's jury claim which was filed only seven days late. Judge Lager aptly points out: 'It has . . . been the clear law in Connecticut since 1899 that a failure to claim a civil action to the jury within thirty days of the return date or within ten days after an issue of fact has been joined amounts to a voluntary and intentional relinquishment of the right to the jury trial provided by Art. I, § 21 of the Connecticut Constitution.' *Noren v. Wood*, 72 Conn. 96, 98, 43 A. 649 (1879). Moreover, the legislature has adopted the court's view by explicitly stating that a party's failure to make a timely jury docket claim pursuant to statute amounts to a waiver of the jury trial. General Statutes § 51-239b.

"The constitutionality of the legislature's ability to limit the time in which a case may be claimed to the jury docket has not been in doubt since 1903. *McKay v. Fair Haven and Westville R.R. Co.*, 75 Conn. 608, 611, 54 A. 923 (1903). In that case, the court found that the statute neither deprived 'parties of their right to a jury trial' nor imposed 'any arbitrary or unreasonable requirements upon one who desires such a trial.' All that is required of a party seeking a jury trial is that the proscriptions of the statute be followed. Indeed, the court noted that the statutory language is 'singularly clear and certain . . . Words could scarcely be chosen which would express with greater precision the requirements to be observed by a litigant to claim his place as a matter of right upon the jury docket.' *Id.*, at 610-11.

"Connecticut law is clear not only that a party has 'no absolute right to a jury trial,' but also that the party who does not wish a jury trial and properly claims a case as a non jury matter has a right to the court trial, in the absence of a court order to the contrary,' *Bristol v. Pritchard*, 81 Conn. 451, 453, 71 A. 558 (1908). *Anastasia v. Mitsock, supra*, 42 Conn. L. Rptr. 454-55; *Anastasia v. Mitsock, supra*, 42 Conn. L. Rptr. 454-55. Fair enforcement of the provisions of General Statutes § 52-215 is required for the benefit of all parties to a lawsuit." (Citations omitted; internal quotation marks omitted.) *Diaz v. Brooks, supra*, Superior Court, Docket No. CV1860791275. Accordingly, for the reasons

> stated above, the motion to strike this case from the jury docket is granted.

Ivers v. Mahon, No. HHDCV206104062, 2021 WL 3409330, at *1-4 (Wilson, J., Conn. Super. Ct. July 1, 2021).

While the Defendant argues that the State Trial Court, Connecticut Appellate Court and Connecticut Supreme Court were incorrect in their decisions, he has provided nothing to justify the contention, bereft of factual and legal support, that his right to a jury trial was violated despite his failure to timely file a claim for jury and/or anything to place even a glancing suggestion on the record that the claim for jury, which was filed sixteen (16) days after the Plaintiff filed its certificate of closed pleadings, was timely filed.

Further, the claims raised by the Defendant regarding the jurisdiction of the State Trial Court not only were wholly an issue of state law but also did not operate to violate the Defendant's right to due process. Pursuant to Practice Book §10-32 "[a]ny claim of lack of jurisdiction over the person or insufficiency of process or insufficiency of service of process is waived if not raised by a motion to dismiss filed in the sequence provided in Sections 10-6 and 10-7 and within the time provided by Section 10-30." Practice Book §10-30(b) requires any such motion to be filed within thirty (30) days of the filing of an appearance. Such jurisdiction, as it relates to the death of a party following the commencement of a foreclosure action and recordation of a lis pendens, is controlled by Conn. Gen. Stat. § 52-325(a) which states, in relevant part

> In any action in a court of this state . . . . the plaintiff or his attorney, at the time the action is

> commenced or afterwards . . . . may cause to be recorded in the office of the town clerk of each town in which the property is situated a notice of lis pendens, containing the names of the parties, the nature and object of the action, the court to which it is returnable and the term, session or return day thereof, the date of the process and the description of the property. . . . Such notice shall, from the time of the recording only, be notice to any person thereafter acquiring any interest in such property of the pendency of the action; and **each person whose conveyance or encumbrance is subsequently executed or subsequently recorded or whose interest is thereafter obtained . . . . shall be deemed to be a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the recording of such notice, to the same extent as if he were made a party to the action**. [Emphasis added.]

"A notice of lis pendens is appropriate in any case where the outcome of the case will in some way, either directly or indirectly, affect the title to or an interest in real property. . . . As [General Statutes] § 52–325(a) provides, the purpose of [notice of lis pendens] is to bind any subsequent purchaser or encumbrancer as if he were made a party to the action described in the lis pendens." *Webster Bank v. Zak*, 71 Conn.App. 550, 561, 802 A.2d 916, *cert. denied*, 261 Conn. 938 (2002), *citing Cadle Co. v. Gabel*, 69 Conn.App. 279, 286, 794 A.2d 1029 (2002).

Thus, the claims raised by the Defendant fail to present a violation of due process rights, or any right

protected under the Constitution of the United States or a violation of any Federal statute.

II. Defendant Has Not Submitted Any Reason Why Further Review of the Case is Necessary.

The Defendant has not provided any reasoning, substantial or not, as to why further review of his case is necessary. He has not put forth any claims that mitigate, excuse, explain or reason his failure to submit evidence or a substantive, legitimate legal theory to the State Trial Court. The Defendant fails to overcome the need for this Court to have been presented a Constitutional Federal question for review and frames a purely state court issue as a challenge invoking the 14th Amendment. Connecticut courts have previously ruled in favor of the Plaintiff on the Defendant's claims. Indeed, in his Petition of Certiorari, the Defendant has raised nearly identical claims as he did in his Petition for Certification to the Connecticut Supreme Court and in his brief to the Connecticut Appellate Court. While the wording of the claims are not identical, the substance of the claims is the same as those presented, considered and decided in favor of the Plaintiff by both the Connecticut Supreme Court and Connecticut Appellate Court.

Although banks are regulated under federal law, they have always been subject to the laws of the state in which they do business and the only time state law is preempted, is if the operation of the state law expressly conflicts with the laws of the United States. *Normand Josef Enters. v. Conn. Nat'l Bank*, 230 Conn. 486, 517, 646 A.2d 1289, 1304-1305 (1994), see also *Nat'l Bank v. Commonwealth*, 76 U.S. (9 Wall.) 353, 362 (1869) (They [the banks] are

subject to the laws of the State, and are governed in their daily course of business far more by the laws of the State than of the nation. All their contracts are governed and construed by State laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on State law.) *See also McClellan v. Chipman*, 164 U.S. 347, 356-357, 17 S. Ct. 85, 87 (1896), *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 11, 127 S. Ct. 1559, 1567 (2007), *Epps v. JP Morgan Chase Bank, N.A.*, 675 F.3d 315, 324 (4th Cir. 2012), *Nat'l City Bank v. Cont'l Nat'l Bank & Tr. Co.*, 83 F.2d 134, 138 (10th Cir. 1936).

Connecticut General Statutes § 49-1 and § 49-15 govern foreclosure proceedings and remedies under Connecticut jurisdiction. Section 49-1, in relevant part, bars further action on the debt and § 49-15 proscribes the proper opening of judgments of strict foreclosure. No federal law established proscribes an equitable process or remedy, as established within the Connecticut General Statutes, thus foreclosure proceedings remain a question for the state courts, not courts within federal jurisdiction. In fact, this Court has recently recognized foreclosures as being the sole province of state law. *See Obduskey v. McCarthy & Holthus LLP*, 139 U.S. 1029, 1033-1035 (2019).

There are no conflicting Connecticut state laws that would furnish an appropriate appeal nor has the Defendant presented any Connecticut state laws that would supplement his argument. The claims raised by the Defendant were all adjudicated in favor of the Plaintiff and the Defendant cannot and has not presented any Connecticut statutory or caselaw which would contraindicate the correctness of the decisions of both

the Connecticut Appellate Court and the Connecticut Supreme Court. Indeed, Connecticut law is clear on the issue—the Defendant failed to set forth the elements necessary in order to succeed on the special defenses and/or counterclaims raised and thus judgment of foreclosure and judgment on the counterclaims properly entered in favor of the Plaintiff.

The Defendant simply resubmits the same claims he made in his Connecticut Appellate Court brief as well as his Petition for Certification to the Supreme Court of Connecticut. He points to nothing in the record which can be construed as evidence; nor even any facts which would tend to support his claims. Therefore, these arguments do not amount to proving facts with evidence which would limit or change the Defendant's rights and should not provide a basis for certiorari.

CONCLUSION

Granting of certiorari is not appropriate in this matter as the Defendant's Petition is not the proper vehicle to seek determination of a Due Process right and that the Defendant has presented no federal question, no new or novel legal theory or additional evidence to this Court, and that the questions contained in Defendant's Petition involve only issues of state law. Thus, for the reasons stated in this Statement in Opposition, the Plaintiff prays that this Honorable Court deny the Defendant's petition for writ of certiorari.

Respectfully submitted,

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Dated: November 22, 2024