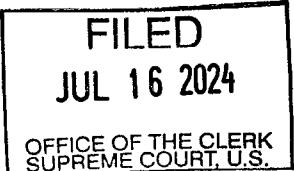


24-7364

ORIGINAL

CASE NUMBER: **USAP2 23-7705**

IN THE UNITED STATES SUPREME COURT



PHILIP EMIABATA, SYLVIA EMIABATA

PETITIONER(S),

Vs.

THE BANK OF NEW YORK MELLON TRUST COMPAY,  
SPECIALIZED LOAN SERVICING, JP MORGAN CHASE  
BANK, AVIAL., LLC, NEWREZ, LLC, d/b/a SHALLPOINT  
MORTGAGE SERVICING ET AL.

RESPONDENT(S)

.....  
**PETITION FOR WRIT OF CERTIORARI**

.....  
PHILIP EMIABATA.....

.....  
SYLVIA EMIABATA.....

1201 Kings Highway suite 2 PMB#1171 Fairfield, CT 06824

Phone(s) 203-610-9605, 512-791-2395

Email: PhilipEmiabata@yahoo.com

## QUESTIONS PRESENTED

1. Is judicial foreclosure pursuant to Texas extensive statutory procedure subject to 14th Amendment Due Process protection ?
2. Can a court deny a Rule 59 (e) and Rule 60(b)(6)ETC., Motion that violates 5th Amendment Due Process protection ?
3. Can court disregarded Excusable negligence, its supported Affidavit and issue an order in a manner that violates 5th Amendment Due Process protection.
4. Can a court Reinstate a Complaint to Grant FRAP 2, on its own or a party's motion, a court of appeals may to expedite its decision or for other good cause Suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b), prior to a case being closed that was post stamped timely filed with receipts on or before due date ?
5. Can a court Reinstate a Complaint to Grant on its own or by a party's motion post stamped with receipts timely filed on or before due date ask for an additional extension of time, to request, clarify or apply FRAP 30. (I)(B) - (C)(l) - (2) (A) – FRAP.
6. Can a court deny a Motion To Reinstate a Complaint to set aside and vacate nonfrivolous complaint on a void judgment under FRAP 60(b)(4) ?
7. Can a court deny a Motion To Reinstate a Complaint to set aside and vacate nonfrivolous complaint in violation of the 5th Amendment Due Process protection ?
8. Can a court deny a Motion To Reinstate a Complaint to set aside and vacate nonfrivolous complaint in violation of the 5th Amendment Due Process protection on a void judgment under FRAP 60(b)(4) that has no statute of limitations on filings a complaint based upon Fraud, Perjury or Fraud upon the court ?

9. Can both District Court and Secord Circuit Disregarding the legal standard use to determine dismissal based on frivolous, pursuant to Section 1915 in violation of Due Process.

10. Can both District Court and Secord Circuit violate 28 U.S.C. § 1915, a statute enacted in support of a congressional goal that access to the courts should be equally available to the poor as well as the rich.

11. Can both District Court and Second Circuit violate the United States Constitutional Protection of Fifth Amendment Due Process and Equal Protection.

12. Has the United States Court of Appeals for the Second Circuit erred in basing its decision on the rulings of a Federal judge who has clearly and willfully violated 28 U.S.C. Section 1915.

13. Can a judge have Immunity for their non judicial activities who knowingly violate civil rights.

14. 42 USC 1983 and Biven Deprivation of rights under color of law itself provides Emiabatas relief

15. Did both court's error in dismissing the case.

16. Can both District Court and Second Circuit Court of Appeals become a Snare that Snare the innocent and Set free the Guilt [Armed Robber Creditors, that unlawful in possession of Appellants Properties] in here, these Armed Robber Creditors, are still, unlawful in possession, detains, et al., of one of Appellants Property, known as 4510 little Hill Circle Austin Texas., Continue Violation, in violation of the Fifth Amendment, Right to owns . . . etc.

17. Can the Armed Robbers Creditors Filed a FALSE DOCUMENTS in the District Court, claiming that 4510 was foreclosure on 2008, but there are Evidences that Appellants Property Kwon's as 4510 Little Hill Circle was refinance in 2012 and Appellants were making their loan payments in, 2008, 2009, 2010, 2011, 2012, to 2015.

18. If a non-prisoner Plaintiff proceeding in forma pauperis files a complaint that fails to satisfy Rule 12(b)(6), does 28 U.S.C. § 1915(e)(2)(B)(ii) empower the District Court to Sua sponte dismiss the claims , without prejudice, prior to service of process?

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## PETITION FOR WRIT OF CERTIORARI

In here, "Petitioner as see above requests that this court issue a writ of certiorari to reverse and remand the decisions below"

### OPINIONS BELOW

**THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT APPENDIX (H)  
IS UNPUBLISHED (Pro se Litigants not sure)**

**THE OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT  
(ORDERS) APPENDIX (F) also(A)**

**THE OPPINION OR ORDER OF UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF  
CONNECTICUT (I) and(J).**

AGREEMENT BETWEEN PHILIP EMIABATA AND SYLVIA EMIABATA AND GMAC MORTGAGE  
CORPORATION AKA GMAC MORTGAGE LLC PRIOR TO TH E ILLEGAL  
FORECLOSURE ACTIONS THAT STARTED JANUARY 3, 2005, WITHOUT LACK OF STANDING. FEDERAL  
RULES AND SERVICING LAWS WERE VIOLATED  
AND MORE. THIS CANNOT BE IGNORED OR DEMED THIS WAS A ROBBERY.

### JURISDICTION

The Court of Appeals entered judgment on April 19, 2024, Doc., 91.1.. Appellants doesn't filed for rehearing., this Court jurisdiction under 28 U.S.C. § 1254, having timely filed this petition for writ a writ of certiorari, pursuant to appellate Rules of civil procedure,

### STATUTORY PROVISION INVOLVED

**CONSTITUTIONAL AND STATUTORY PROVISIONS NVOLVED** U.S. Const. amend. XIV The 14th amendment of the United States Constitution gives everyone a right to due process of law, which includes judgments that comply with the rules and case law. Most due process exceptions deal with

the issue of notification. If, for example, someone gets a judgement against you in another state without your having been notified, you can attack the judgement for lack of due process of law. In Griffen v. Griffen, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 a pro se litigant won his case in the Supreme Court who stated The Fourteenth Amendment states: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV., \* \* \* 5<sup>TH</sup> Amendment of the United States Constitution, due process and Substantive due process pursuant to Equal Protection Rights..

**28 U.S.C. § 1915(e)(2)(B)(ii)**, for failure to state a claim upon which relief may be granted prior to service upon appellees., responsive pleading \* \* \* violate Appellants due process rights\* \* \* district courts are not authorized to sua sponte dismiss a complaint or Appeal for failure to state a claim to which relief may be granted pursuant to **28 U.S.C. § 1915(e)(2)(B)(ii)**, PRIOR to service upon Defendants or Appellees which include responsive pleading\* \* \* pursuant to Rule 12(15) right of amendment et al. , ("Constitutional Provision Involved")

#### **The United States Constitution, Amendment V:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,\* \* \*, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

#### **STATEMENT OF THE CASE**

PHILIP EMIABATA and SYLVIA EMIABATA timely filed in the United States Court Of Appeal on a Void Judgment ..and No Due Process. In addition to this, she presented her receipts to prevent this case complaint on a void judgment from being illegally dismissed-denied regarding a Fraud Upon The Court and Constitutional Issues on No Due Process.

GROUND: **RULE 60(b) (1) (2) (3) (4) (6) 60(d) (1) (2) (3) and FRAP 25(a)(2)(B) and RULE 17 (a)(1) and 9(b).** When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See *El-Kareh v. Texas Alcoholic Beverage Comm'n*, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ); see also *Evans v.*

C. Woods, Inc., No. 12-99-00153-CV, 1999 WL 787399, at \*1 (Tex. App.-Tyler Aug. 30, 1999, no pet. h.).

**A Party Affected by VOID Judicial Action Need Not APPEAL.** State ex rel. Latty, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case, because a void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgments.

Section 35-10-9: Sales contrary to article null and void. All sales of real estate, made under powers contained in mortgages or deeds of trust contrary to the provisions of this article, shall be null and void, notwithstanding any agreement or stipulation to the contrary. (Code 1907, \*4134; Code 1923, 57849; Code 1940, T. 7, (561.).

The Appellate Division, Second Department (Kluge v Fugazy, 145 AD2d 537, 538 [2d Dept 1988]), held that a "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity." Citing Kluge v Fugazy, the Court (Katz v East-Ville Realty Co., 249 AD2d 243 [1st Dept 1998], held that "[p]laintiff's attempt to foreclose upon a mortgage in which he had no legal or equitable interest was without foundation in law or fact.

**GMAC Mortgage LLC, aka Residential Capital** wasn't the holder of the note when they created their illegal mortgage on January 3, 2002. Their Assignment was filed July 11, 2008 and they became owners of the property on a foreclosure deed they purchased from themselves based upon fraud and fraud upon courts with illegal orders.

The Arrears the Relief was based upon is fraud on arrears dated back to March 2006 on a mortgage they illegally created in 2005, they didn't have grounds to file complaints by the rule of law, they didn't own the property when they created their illegally mortgage by attaching their name to Corla Jackson insurance policies to process claims under their fabricated mortgage which is a bigger crime, without a recorded deed, trustee's deed of sale and without the release-cancellation of the original note between Emiabatas and Option One Mortgage Corporation.

**The law firms and corrupted Judges went back with illegal order to cover up no due process and fraud upon the court with a Remand 2021 and 2022 Bankruptcy Court of District of Connecticut, with the intent to cover the illegal foreclosure 2008 [4510 Little Hill Circle] and 2019 illegal foreclosure [508 Evening Grosbeak property]. . . , so no one would find out the truth on what really occurred here. There was No Due Process prior to the illegal foreclosure 2019 recorded through the courts filed in Bankruptcy Court for District of Connecticut., Case #21-30197., Doc.,#63-2 to 3., Dated June 22, 2021. and the judges and court knew this. Fraud Upon The Court without lack of standing on a Void Judgment, is illegal. A Remand will not support No Due Process Law after the crime was committed based upon Fraud Upon The Court. Constitutional Laws were violated here, that was covered up illegally with illegal orders based upon fraud and fraud upon the court's.**

**Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers. A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring).**

When rule providing for relief from void judgments is applicable, **relief is not discretionary matter, but is mandatory**, Orner. V. Shalala, 30 F.3d 1307 (Colo. 1994). This cannot be ignored its fact recorded! Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.. U.S.C.A. Const. Amend. 5 -Klugh v. U.S., 620 F. Supp. 892 (D.S.C. 1985).

GMAC MORTGAGE DIDN'T OWN THE PROPERTY WHEN THEY CREATED THEIR NEW MORTGAGE 0835002124 JANUARY 3, 2005, OR PRIOR TO THEIR ILLEGAL FORECLOSURE JUNE 1, 2012. THERE WAS NEVER A RECORDED DEED OR MORTGAGE CONTRACT AGREEMENT BETWEEN CORLA JACKSON AND GMAC MORTGAGE CORPORATION AKA GMAC MORTGAGE LLC PRIOR TO THE ILLEGAL FORECLOSURE ACTIONS THAT STARTED JANUARY 3, 2005, WITHOUT LACK OF STANDING. FEDERAL RULES AND SERVICING LAWS VIOLATED AND MORE. THIS CANNOT BE IGNORED OR DENIED THIS WAS A ROBBERY.

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The law firms and corrupted Judges went back with illegal order to cover up no due process and fraud upon the court with a Remand February 3, 2016 with the intent to cover the illegal foreclosure June 1, 2012 so no one would find out the truth on what really occurred here. There was No Due Process prior to the illegal foreclosure June 1, 2012 recorded through the courts filed in case (12-00111) and the judges and court knew this. Fraud Upon The Court without lack of standing on a Void Judgment, is illegal. A Remand will not support No Due Process Law after the crime was committed based upon Fraud Upon The Court. Constitutional Laws were violated here, that was covered up illegally with illegal orders based upon fraud and fraud upon the court's.

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appellate court may declare void any orders the trial court signed after it lost plenary

power over the case, because a void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment.

Section 6-9-180: Jury trial on issues of fact. If the motion or application is to enter satisfaction of a judgment under the Alabama Rules of Civil Procedure or to set aside the entry of satisfaction of a judgment, on request of either party, the issue of fact must be tried by a jury. (Code 1886, \*2870; Code 1896, \*3340; Code 1907, \*4146; Code 1923, 57861; Code 1940, T. 7, 5573.) When appeal is taken from a void judgment, the appellate court must declare the judgment void. Because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See *El-Kareh v. Texas Alcoholic Beverage Comm'n*, 874 S.W.2d 192, 194 (Tex. App.--Houston [14th Dist.] 1994, no writ); see also *Evans v. C. Woods, Inc.*, No. 12-99-00153-CV, 1999 WL 787399, at \*1 (Tex. App.--Tyler Aug. 30, 1999, no pet.h.).

The law is well-settled that a void order or judgement is void even before reversal", *VALLEY v. NORTHERN FIRE & MARINE INS. CO.*, 254 U.S. 348, 41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal. " *WILLIAMSON v. BERRY*, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850).

FRCP Rule 60(b) provides that the court may relieve a party from a final judgment and sets forth the following six categories of reasons for which such relief may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) circumstances under which a judgment is void; (5) circumstances under which a judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. F.R.C.P. Rule 60(b)(1)-(b)(6). To be entitled to relief, the moving party must establish facts within one of the reasons enumerated in Rule 60(b).

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner. V. Shalala*, 30 F.3d 1307 (Colo. 1994). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a

manner inconsistent with due process, Fed. Rules Civ. Proc. , Rule 60(b)(4), 28 U.S.C.A., U.S.C.A. Const. Amend. 5 Klugh v. U.S., 620 F. Supp. 892 (D.S.C. 1985).

A void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). The Court Has A Responsibility To Correct a Void Judgment: The statute of limitations does not apply to a suit in equity to vacate a yap.i.d..i.udægul. (Cadenasso v. Bank of Italy, p. 569; Estate of Pusey, 180 Cal. 368, 374 [181 P. 6481.] This rule holds as to all void judgments. In the other two cases cited, People v. Massengale and In re Sandel, the courts confirmed the judicial power and responsibility to correct void judgments

Section 35-10-9: Sales contrary to article null and void. All sales of real estate, made under powers contained in mortgages or deeds of trust contrary to the provisions of this article, shall be null and void, notwithstanding any agreement or stipulation to the contrary. (Code 1907, Y134., Code 1923, \*7849; Code 1940, T. 7, }561.).

A void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). When appeal is taken from a void judgment, the appellate court must declare the judgment void. Because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal.

## REASONS FOR GRANTING THE WRIT

In here, the legal questions issues raised by appellants in these appeal are importance to prevent the deprivation, violation of constitutional rights et al., also are of importance events beyond the scope of the present case., The lower courts has made an error and cover up to shield the issues raised of engagement of perjury by appellees Counsel., that is grievous and should be fixed.

Since the trial court's dismissal "without prejudice but involved intimidations and pressure to prevent appellants not to refiling \* \* \*") was void, it may be attacked either by direct appeal or collateral attack Ex parte Williams, No. 73,845 (Tex.Crim.App. 04/11/2001). "Void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties

or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See Long v. Shorebank Development corp., 182 F.3d 548 (C.A. 7 111. 1999).

A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Seidel, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001), Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring).

Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers. A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring).

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, Orner. V. Shalala, 30 F.3d 1307 (Colo. . . .,

Appellants or Petitioner, **Rule 60 (b) and Rule 59(e) Motions** which the district Court did not Rule on or at bare minimum to address is among the issues Appellants or Petitioner is respectfully asking this Appellate Court to reviewed. [It] certainly should not be allowed not to be address or swept under rug "dignified silent"., Above discuss **motion Rule 60(b)** motion are proper because it would ultimately lead to a claim for relief under violation of due process.

In here, Petitioner are seeking in the end to obtain **Rule 59(e) and Rule60(b)** relief. The Petitioner are true Rule 60(b) motion is simply asserting that they did not get a fair shot in the original Rule 59(e) and Rule 60(b)\* \* \*proceeding because its integrity was marred by a flaw that must be repaired in further proceeding. "In re Pickard,(10 th Cir. 2012).

Also, the Court should review the Appellants Rule 60(b) filed in the Bankruptcy court also swept under the rug in all due respect, to cover up these above discussed unlawful conspiracy ,and constitutional violation et al., See, Petitioner Appendices( I)

GMAC MORTGAGE DIDN'T OWN THE PROPERTY WHEN THEY CREATED THEIR NEW MORTGAGE 0835002124 JANUARY 3, 2005, OR PRIOR TO THEIR ILLEGAL FORECLOSURE JUNE 1, 2008 AND 2019.

THERE WAS NEVER A RECORDED DEED OR MORTGAGE CONTRACT AGREEMENT BETWEEN EMIABATAS AND GMAC MORTGAGE CORPORATION AKA GMAC MORTGAGE LLC PRIOR To TH E ILLEGAL FORECLOSURE ACTIONS THAT STARTED JANUARY 3, 2005, WITHOUT LACK OF STANDING. FEDERAL RULES AND SERVICING LAWS WERE VIOLATED AND MORE. THIS CANNOT BE IGNORED OR DENIED THIS WAS A ROBBERY.

12 U.S. Code 2605: Servicing of mortgage loans and administration of escrow accounts: Federal Rule of Civil Procedure 17(a)(1) which requires that "[a]n action must be prosecuted in the name of the real party in interest." See also, *In re Jacobson*, 402 B.R. 359, 365-66 (Bankr.W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008).

Federal Rule of Civil Procedure 17(a)(1) which requires that "[a]n action must be prosecuted in the name of the real party in interest." See also, *In re Jacobson*, 402 B.R. 359, 365-66 (Bankr. W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008). Mortgage Electronic Registration Systems, Inc. v. Chong, 824 N.Y.S.2d 764 (2006). MERS did not have standing as a real party in interest under the Rules to file the motion. The declaration also failed to assert that MERS, FMC Capital LLC or Homecomings Financial, LLC held the Note.

When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See *El-Kareh v. Texas Alcoholic Beverage Comm'n*, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ); see also *Evans v. C. Woods, Inc.*, No. 12-99-00153-CV, 1999 WL 787399, at \*1 (Tex. App.-Tyler Aug. 30, 1999, no pet. h.).

A. Pursuant to Federal Rule of Civil Procedure 27, local Rule\* \* \*, Rule 26 of the FRAP and Rule 24(a)(3) of the Federal Rules of Appellate Procedure provides: . . .Appellants Philip Emiabata and Sylvia Emiabata in opposition to the United States District Judge's Order.

\* The U.S. District Judge Disregarding the legal standard use to determine dismissal based on frivolous, pursuant to Section 1915 as in here section 1915 is a statute of general applicability to poor persons.

\* Section 1915 it is a statute enacted in support of a congressional goal that access to the courts should be equally available to the poor as well as the rich.

\* Section 1915 it is not a sanction statement.

\* Although in here the District Court has authority to dismiss an action for frivolousness under the statute of section 1915, here the district court have been afforded an objective standard. . ., this is one of the substantial differences between the petitioner and the respondent in this case. . . an objective standard pursuant to which the District Court can determine whether factual allegations have an arguable basis and therefore are not frivolous,

\* The U.S District Judge Disregarding the legal standard use to determine dismissal based on frivolous, pursuant to Section 1915 as in here section 1915 is a statute of general applicability to poor persons.

\* Section 1915 it is a statute enacted in support of a congressional goal that access to the courts should be equally available to the poor as well as the rich.

\* Section 1915 it is not a sanction statement.

\* Although in here the District Court has authority to dismiss an action for frivolousness under the statute of section 1915, here the district court have been afforded an objective standard. . ., this is one of the substantial differences between the petitioner and the respondent in this case. . . an objective standard pursuant to which the District Court can determine whether factual allegations have an arguable basis and therefore are not frivolous,

Supreme Court in Neitzke, determined an objective standard, Namely the standard that the claim must have a, quote, arguable basis, unquote, in law and fact.

Arguable does not means reasonable chance of succeeding according to the viewer, pursuant to Neitzke.

Pursuant to Neitzke Arguable in the view of the respondent means whether any rational fact-finder could conclude that the allegations are true in here before the Order of the U.S. District Judge., Secondly, the seven line pages Order, assertion that appeal is frivolous, there were no Record :Facts Find. In here. If the Honorable Judge U.S. District Judge, at bare minimum has engage in fact finding here he would have found that Mr. Emiabatas Properties were fraudulently transfer by creditors, in violation of Emiabatas Constitutional Protected Rights., Fifth Amendment of the Due Process, Equal Rights et al.

X  
Emiabatas  
Properties

The U.S. District Judge Order, claiming that appellant appeal were taken in bad faith., . . in here, all due respect,

honorable judge is wrong and did not apply the Fact and Law., Rule 12s gives plaintiff here the opportunity to amend and be hard, which is require by Unite States Constitution of the Due Process et al.

Expands on the erroneous conclusions of the, U.S. District Judge, missed apply prevailing case law, pursuant to Supreme Court in **Neitzke**. Appellants in here, Opposition to the District Court Order assertion claiming Appellants appeal is frivolous. . . . It is proper that this Court of Appeals, Ninth Circuit, in here, Appellants respectfully asking the Court of Appeals to Sustain Emiabatas Opposition, and grant Them In forma pauperis, and should allowed Appellants Appeal to go forward.

**B.** This petition arises from **28 U.S.C. Section 1915 (a)(1)** Appellant filed this writ of certiorari for the following reasons :

(1) Appellant Motion to proceed in forma pauperis with its Affidavit in support in, United States District Court., The United States District Court at Arizona Phoenix as seen in it (Docket), The United States District Court characterized, Appellants Appeal as Frivolous Pursuant to 28 U.S.C Section 1915 (e)(2)

In here, The District Court Ordered and Second Circuit Order Judgment never states the reasons, what make Pro se Litigant appeal as frivolous, Pursuant to U.S.C. Section 1915 (e)(2) in here pro se Plaintiff-Appellant is Entitle to the Reasons what makes appellants motion to proceed in forma pauperis to be frivolous. For the Honorable: United States District Judges., failure to States the Reasons, what makes Pro se Appellant Motion to proceed in forma pauperis frivolous, in here, it calls for reversal. Appellants were not given the opportunity to put up defenses,. . .Violation of The U.S. Constitution.

(2) Appellants motions to mention but a few, Motion to Show cause send to the abovementioned District Court and Appellant Brief also sent by Register Receipt, Evidence showing that the abovementioned District Court got it but refused to Docket it, as timely and the District Court., Failure to Apply Houston (mailbox rule ) in here, reversal is proper. Also, in here, for the above District Judge not to treat Appellants Pro Se, pursuant Fed . R. C. P. (FRCP) the time Appellant Brief to be timely, pursuant to Houston mailbox rule, this cried for Reversal supra.

Appellants will produce Evidence During Brief showing that District court received Appellants Motions Timely. In here, District Judge erred and abuse its discretion in denying appellants motion(s) to proceed in forma pauperis and second, the Second Circuit failure to vacate the decision of District Court, because the reasons, denying appellants In forma pauperis after Appellants had filed their notice of appeal, in here, Second Circuit erred, **Notwithstanding before Appellants filed their notice of appeal Appellants Status with the same District Court was In forma pauperis.**, Appellant does not know why\* \* \* ("characterized Appellants Appeal as frivolous")

because the above mention District Judges never provide Pro Se, any reasons of appellant assertion pursuant to the above discussed Order "frivolous" ., as seen in the Ordered which characterized Appellants Appeal as frivolous Supra., and this unknow reasons of the decision of District Court, because of this unknow reasons, does not even hold internally when the facts of the Appellant complaint are taken as true., FRCP., call for, that Appeal should be resolved by its merits not as in here.

## 11. SCREENING REQUIREMENT:

The Court is required to review a case filed in forma pauperis. See 28 U.S.C. Section 1915)., The Court must review the complaint and dismiss any portion thereof that is frivolous or malicious, in here the Courts failed to do so., fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. In here the above does not apply, as no defendants here is immune from such relief. 28 U.S.C. Section 1915(e)(2)(B). If the Court determines the complaint fails to state a claim, leave to amend should be granted to the extent that the deficiencies in the pleading can be cured by amendment. In here Appellant as pro se call for amendment. Lopez v. Smith, 203 F.3d 1122, 1127-28 (9th Cir.2000)(en banc).

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief; in order to 'give the defendant fair notice of what the...claim is and the ground upon which it rests[.]' "Bell Atlantic corp. v. Twombly, 550 U.S.C. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). Nevertheless, a plaintiff's obligation to provide the grounds of entitlement to relief [Plaintiff-Appellant have done so] under Rule 8(a)(2) requires more than "naked assertion" "labels and conclusions" or "formulaic recitation[s] of the elements of a cause of action." Twombly, 550 U.S. at 555-57. The complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' "Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868, 883 (2000)(Twombly, 550 U.S. at 570). Vague and conclusory allegations are insufficient to state a claim. See Ivey v. Board of Regents, 673 F. 2d 266, 268 (9 th Cir. 1982). In the above foregoing Appellant had certified the screening requirement.

In re Scott, Seven judges dissented from the denial of rehearing en banc in Scott, contending that the majority opinion "misconceives the reality of pretrial release and the applicable constitutional principles." Id., 450 F. 3d at 889 (Callahan, J.)

See U.S. Supreme Court., Coppedge v. United States. 369 U.S. 438 (1962)

At (f)" If it appears from the face of the papers filed in the Court of Appeals that the Applicant will present issues for review which are not clearly frivolous, the court of Appeals should grant leave to proceed in forma pauperis, appoint counsel to represent the appellant, and proceed

to consideration of the appeal on the merits in the same manner that it considers paid appeals., **P. 369 U.S. 446**

Also, at (g)" . . . adequately be ascertained from the fact of the application, the court of Appeals must provide the would-be appellant with the assistance of counsel and with a transcript of the record sufficient to enable him to attempt to make a showing that the District Court's certificate of lack of good faith is erroneous," **P. 369 U.S. 446.**, [H]ere, this should be apply to Appellants .

(h) "if, with such aid, the applicant then presents any issue for the court's consideration which is not clearly frivolous, leave to proceed in forma pauperis must be granted. **P. 369 U.S. 446**".

(i) "An Indigent defendant is entitled in all respects to the same right of appeal as a defendant who is able to pay the expenses of his appeal., **Pp. 369 U.S. 446-447**".

(j) "On an application for leave to appeal in forma pauperis, the burden is not on the applicant to show that his appeal has merit in the sense that he is bound, or even likely, to prevail ultimately; the burden is on the Government to show that the appeal is so lacking in merit that the court would dismiss the case as frivolous on the Government's motion had the case been docketed and had a record been filed by an appellant able to pay the expenses of complying with these requirements Pp. 369 U.S. 447-448."

(k) "If it is the practice of a Court of Appeals to defer rulings on motions to dismiss paid appeals until the court has had the benefit of hearing argument and considering briefs and an adequate record, it must accord the same procedural rights to a person applying for leave to proceed in forma pauperis., **P. 369 U.S. 448**". Hence in here it is appropriate to apply this to Appellants here Emiabatas.

On the record in Supreme Court of the United States. . . , taken as a whole, it cannot be said that petitioner's claim are so frivolous as to justify the summary disposition of his case which . . . , also in here Appellants case.

In all due respect., **the United States District Judge and Second Circuit**, Sua sponte motion or Order that Denys Appellants Appeal, are designed tactic, manifestation, fake, deceit to violate on Appellants Due process, Equal Rights etc.

Here Appellants are here challenging this Sua sponte Motion. Appellants filed their Appeal timely in both the District Court and the Second Circuit Court of Appeals, Appellants Complaint certified the Prerequisite of Federal Rule of Civil Procedure 8(a)(2) Rule 9s, Rule 12s et al, the above foregoing are some of the Respectful Question that Deserve Dignify Answers in this Appeal which both U.S. District Judge and the Connecticut Bankruptcy judge, trying to shut the doors of Justice on Pro Se litigants.

Appellants application to proceed in forma pauperis should be grant, so to pave ways, to resolved Appellants complaint based on it merit, pursuant to Federal Rule of Civil Procedure; Alternative, This court should sent this case back to the District Court with instructions, allowing Appellants action to be resolved on merit.

For the reasons set forth above, Appellant respectfully request that the Court grant Appellants In forma pauperis and allowed this action to go forward.

## CONCLUSION

### CONCLUSION

This cannot be ignored its fact recorded! Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28

U.S.C.A., U.S.C.A. Const. Amend. 5 -Klugh v. U.S., 620 F. Supp. 892 (D.S.C. 1985).

12 U.S. Code 2605: Servicing of mortgage loans and administration of escrow accounts: Federal Rule of Civil Procedure 17(a)(1) which requires that "[a]n action must be prosecuted in the name of the real party in interest." See also, *In re Jacobson*, 402 B.R. 359, 365-66 (Bankr.W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. cal. 2008).

Federal Rule of Civil Procedure 17(a)(1) which requires that "[a]n action must be prosecuted in the name of the real party in interest" See also, *In re Jacobson*, 402 B.R. 359, 365-66 (Bankr. W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. cal. 2008). Mortgage

Electronic Registration Systems, Inc. v. Chong, 824 N.Y.S.2d 764 (2006). MERS did not have standing as a real party in interest under the Rules to file the motion. The declaration also failed to assert that MERS, FMC Capital LLC or Homecomings Financial, LLC held the Note.

When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See *El-Kareh v. Texas Alcoholic Beverage Comm'n*, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ); see also *Evans v. C. Woods, Inc.*, No. 12-99-00153-CV, 1999 WL 787399, at (Tex. App.-Tyler Aug. 30, 1999, no pet.h

A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case, because a void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment.

A Void Judgement is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Seidel, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001). See. Wells Fargo. Litton Loan v. Farmer, 867 N.Y.S.2d 21 (2008). "Wells Fargo does not own the mortgage loan therefore, the matter is dismissed with prejudice. See: Sturdivant v. BAC Home Loans LP, [Ms. 2100245, Dec. 16, 2011] so. 3d (Ala. Civ. App. 2011). In Sturdivant, BAC Home Loans, LP ("BAC"), initiated foreclosure proceedings on the mortgage encumbering Bessie T. Sturdivant's house before the mortgage had been assigned to BAC.

A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).

Black's Law Dictionary, Sixth Edition, p. 1574:

Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process. Klugh v. U.S., D.C.S.C., 610 F. Supp. 892, 901. See also Voidable judgment. Black's Law Dictionary, Sixth Edition, p. 1574.

Assignment: An assignment of mortgage must be in writing and recorded. 35-4-51: To effectuate an assignment, the general rules is that the assignment must be in proper written format and recorded to provide notice of the assignment.

Section 35-4-57: Deeds of assignment for benefit of creditors. All deeds of assignment executed by debtors for the benefit of creditors shall, as soon as executed, be filed and recorded in the office of the judge of probate of the county in which the

property is situated, and such deeds are operative in all respects as other deeds from the day of the delivery to the judge. (Code 1896, \*1004; code 1907, \*3381; code 1923, \*6872; Code 1940, T. 47, \*115.).

Section 35-4-50: Conveyances required to be recorded in office of probate judge. Conveyances of property, required by law to be recorded, must be recorded in the office of the judge of probate. (Code 1852, \*1268; code 1867, \*1537; code 1876, \*2147; Code 1886, \*1791; code 1896, \*985; code 1907, \*3367; code 1923, \*6853; Code 1940, T. 47, \*94.).

The assignment of the Defendant's note and mortgage, having not been assigned from the Depositor to the Trust, is therefore VOID as in being in contravention of the Governed Laws and Security Laws under Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 and Section 21C of the Exchange Act of 1934 and Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13-using deceptive practices and more. There was never a recorded mortgage (0835002124) or an Conveyance to EMIABATAS of the mortgage ( . . . ) by GMAC Mortgage Corporation aka GMAC Mortgage LLC., created to themselves ( . . . ) without lack of standing.

Section 35-4-50: Conveyances required to be recorded in office of probate judge: Conveyances of property, required by law to be recorded, must be recorded in the office of the judge of probate. (Code 1852, \*1268; code 1867, \*1537; code 1876, \*2147; Code 1886, \*1791; code 1896, \*985; code 1907, \*3367; code 1923, \*6853; Code 1940, T. 47, \*94.).

***Emiabatas, Were deprived of their Rights, to States a Claims upon which Relief be granted 42 U.S.C. § 1981 and 12 U.S.C.,\* \* \*because their Appeal was dismissed Arbitrary, Capricious Affirming the District and the Bankruptcy Void Judgment Order.***

***Pursuant to Second Circuit Court of Appeals Wrongly Decisions "sua sponte", No Due Process and does not supported by Rules or Law., in here, it's proper to reverse this harmful, egregious decisions et al., as Seen., In this said Second***

***Circuit Court of Appeals Order or Ruling by Affirming a harmful egregious not supported by the Rule of Law or Moral.,***

***In all due respect., The Second Circuit decision also went so far to engage in apogee Intimidation and Compelling Pressure to prevent Appellants from seeking their Rights for en banc hearing. These actions by Second Circuit Court of Appeals amount to Constitutional Violation of Fifth Amendment under due process and Substantive Due Process\* \* \*. The only thing Appellants did wrong in the Second Circuit Court of Appeals is that Appellants are African-American's.,***

***In here, the Second Circuit Court of Appeals think that the United States Constitution does not apply to Emiabatas, Simply because they are African/African-American Supra., Second Circuit Court affirming the decision of District Court Orders which violated the Constitutional Protected Rights say it all.***

#### **STATUTES AND RULES**

Option One Mortgage was a California Corporation, they were EMIABATAS Lender.

Wells Fargo v. Erobobo, published held: "The assignment of the Defendant's note and mortgage, having not been assigned from the Depositor to the Trust, is therefore VOID as in being in contravention of the PSA.

See: Governed Laws and Security Laws under Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 and Section 21C of the Exchange Act of 1934 and Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13.

Federal Rule of Civil Procedure 17(a)(1 12  
U.S. Code 2605:

35-4-51

Section 35-4-57: Code of Alabama  
1975 Section 35-10-9 Section 35-4-50  
and Code of Texas.

28 U.S.C. 51254 (1)  
28 U.S.C. S1332 (a)  
Cal. Civ. Code 52924  
Cal. Civ. Code 52924.17  
Cal. Civ. Code S2924(a)

*OTHER*

OTHER PARTIES OF INTEREST LINKED TO THIS CRIME

John C. McAleer III — Alabama Chapter 13 Bankruptcy Trustee

Cases: 05-13142-10-04820-11-01545 or Code of Texas.

KCC-RESCAP Chapter 13 Administrators-Case 12-12020-12-12032

OCWEN ET, AL., aka OCWEN FINANCIAL CORPORATION ET, AL. aka

OCWEN Loan Servicing LLC., Deutsche Bank

Rust Consulting-Rust Independent Foreclosure Reviews

Altisource

HLSS

Wilbur Ross & Company et, al., Homeward-Cerberus-Cyprus Bank, Invesco, OCWEN.,  
American Home Mortgage et, al. aka AHMSI et, al., HR Block et, al. aka Option One Mortgage  
Corporation et, al. aka Sand Canyon Corporation et, al., wells Fargo Bank N.A. aka Wells  
Fargo Bank

G.E. Money, Deutsche Bank-William C. Erbey aka William Erbey OCWEN Stewart Title  
Company

Farmers Insurance Group aka Farmers Fire Exchange

General Motors Acceptance Corporation

General Motors Acceptance LLC

GM LLC aka GMAC Corporation

Residential Funding Corporation

FEDERAL RESERVE (Enforcement Orders Violated-More) CFPB  
(Consent Orders Violated-More)

SEC (Enforcement Orders Violated-More)

Mortgage Company Law Firms Linked To Theft of Land and Theft Of Home To Date: Sirote & Permutt P.C., Starnes & Atchison aka Starnes, Bradley Arant Boult

Cummings LLP., Morrison & Foerster LLP., Vickers RIIS, Murray, Curran, LLC., C. Richard Wilkins., Johnston & Freedman LLC, Johnson & Freedman LLC, RCO Legal

P.C., Prince, McKenna & Broughton, LLC., Jauregui & Lindsey LLC., State Of Alabama.  
New Discovery-Discovery Will Be Added As Needed If Requested or Required By Court.

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 28 U.S.C.A., U.S.C.A. Const. Amend. 5 Klugh

v. U.S., 620 F. Supp. 892 (D.S.C. 1985). Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, City of Lufkin v. McVicker, 510 S.X.2d 141 (Tax. Civ. App.-Beaumont 1973). When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, Omer. V. Shalala, 30 F.3d 1307 (Colo. 1994).

THE PETITIONER EMIABATAS HAS GROUNDS: NO DUE PROCESS

PRIRO TO THE ILLEGAL FORECLOSURE (October 7, 2008) STYLED GMAC and JP Morgan Chase Bank, N.A MORTGAGE LLC VS. EMIABATAS IN THEIR EVICTION-EJECTMENT ACTIONS IN CASES (....) and (CV-....).

THERE WAS NO REMAND OR SUMMARY JUDGMENT OR CONVEYANCERECORDED- TO EMIABATAS BY THE RESPONDENT(S) UNDER THEIR  
MORTGAGE LOAN NUMBER (005304478364) PRIOR TO THE ILLEGAL  
FORECLOSURE October 7, 2008, THIS PREVENTED THE ILLEGAL

FORECLOSURE, THE CASE WAS PENDING A DEMAND BY TRIAL, (JUNE 1, 2012). THE ILLEGAL ORDERS WERE PRECURED BY FRAUD. See Appendix CHASE showing MODIFICATION AGREEMENT 06/13/2012

Section 6-6-563: Service of process: If any of the parties set out in Section 6-6562, whose names are known, reside in the State of Alabama, a copy of the complaint must be served upon them, in the same manner that process is served on defendants in civil actions. (Acts 1923, No. 526, p. 699; Code 1923, \*9914; Code 1940, T. 7, \*1118; Acts 1951, No. 882, p. 1521, \*3.)

wells Fargo, Litton Loan v. Farmer, 867 N.Y.S.2d 21 (2008). "Wells Fargo does not own the mortgage loan... Therefore, the... matter is dismissed with prejudice.

Violation of Judicial Foreclosures: Section 6-9-180: Jury trial on issues of fact. If the motion or application is to enter satisfaction of a judgment under the Alabama Rules of Civil Procedure or to set aside the entry of satisfaction of a judgment, on request of either party, the issue of fact must be tried by a jury. (Code 1886, \*2870; Code 1896, \*3340; Code 1907, \*4146; Code 1923, \*7861; code 1940, T. 7, \*573.).

18 U.S.A. 1962(b) which prohibits "any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

GMAC Mortgage LLC said they issued (DUE PROCESS) on (10/3/2012) and served on the same day which is Fraud (10/3/2012), this is recorded on (10/26/2012) under case (DV-2012-902844). Regardless Due Process was Served after the illegal wrongful foreclosure (June 1, 2012), which is a VOID JUDGEMENT.

The Assignment of Mortgage in Instrument 2008050095 at Book 6409 and Page 1483 in the records of the Probate Court in Mobile County, Alabama. , was created on (June 19, 2008) was filed (July 11, 2008). The crime was initiated (January 2005) without lack of standing prior to Assignment of Mortgage prepared June 19, 2008, filed (July 11, 2008).

Assignment of Mortgage (Absolute) includes the following provisions:

\*. Effective Date/Parties: Sets forth the effective date of the mortgage assignment and the names of the assignor and assignee;

- \*. Mortgage Information: The date and recording information of the mortgage, name of the borrower, address of mortgaged property, original amount of the mortgage and the amount of indebtedness presently owing;
- \*. Mortgage Assignment: Sets forth that assignor transfers their interest in the mortgage to the assignee and the amount of indebtedness presently owed;
- \*. Security: Assignor sets out that mortgage is a valid security and that the mortgage has not been discharged;
- \*. Signatures: Both parties must sign and date the mortgage assignment in the presence of witnesses.

The Appellate Division, Second Department (Kluge v Fugazy, 145 AD2d 537, 538 [2d Dept 1988]), held that a "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity." Citing Kluge v Fugazy, the Court (Katz v East-Ville Realty Co., 249 AD2d 243 [1st Dept 1998], held that "[p]laintiffs attempt to foreclose upon a mortgage in which he had no legal or equitable interest was without foundation in law or fact.

**The Court Has A Responsibility To Correct a Void Judgment:** The statute of limitations does not apply to a suit in equity to vacate a void judgment. (Cadenasso v. Bank of Italy, p. 569; Estate of Pusey, 180 Cal. 368, 374 [181 P. 648].) This rule holds as to all void judgments. In the other two cases cited, People v. Massengale and In re

Sandel, the courts confirmed the judicial power and responsibility to correct void judgments. Void order may be attacked, either directly or collaterally, at any time, In re Estate of Steinfeld, 630 N.E.2d 801, certiorari denied, See also Steinfeld v. Hoddick, 513 U.S. 809, (Ill. 1994). Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, People ex rel. Brzica v. Village of Lake Barrington, 644 N.E.2d 66 (Ill. App. 2 Dist. 1994). No Due Process by the RESPONDENT(S) prior to the illegal foreclosure June 1, 2012.

FRAUD UPON THE COURT dated back to (2005) in Bankruptcy Case (05-13142) and (2019),CT., Bankruptcy case (21-30197) Doc.,# 70 Dated 07/19/2021

AND NO DUE PROCESS prior to the illegal foreclosure by the RESPONDENTS on JUNE 1 2012. A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case. "A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no

respect whatsoever because it does not affect, impair, or create legal rights." *Ex parte Seidel*, 39 S.W.3d 221, 225 (Tex. Crime App. 2001). Void order may be attacked, either directly or collaterally, at any time, *In re Estate of Steinfeld*, 630 N.E.2d 801, certiorari denied, See also *Steinfeld v. Hoddick*, 513 U.S. 809, (Ill. 1994). Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, *People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66 (111.App. 2 Dist. 1994).

Federal Rule of Civil Procedure 17(a)(1) which requires that "[a]n action must be prosecuted in the name of the real party in interest." See also, *In re Jacobson*, 402 B.R. 359, 365-66 (Bankr. W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008). *Mortgage Electronic Registration Systems, Inc. v. Chong*, 824 N.Y.S.2d 764 (2006). MERS did not have standing as a real party in interest under the Rules to file the motion. The declaration also failed to assert that MERS, FMC Capital LLC or Homecomings Financial, LLC held the Note.

RESPONDENT(S) IS A SERVICER:

12 U.S. Code 2605: Servicing of mortgage loans and administration of escrow accounts: Federal Rule of Civil Procedure 17(a)(1) which requires that "[a]n action must be prosecuted in the name of the real party in interest." See also, *In re Jacobson*, 402 B.R. 359, 365-66 (Bankr. W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008).

The Appellate Division, Second Department (*Kluge v Fugazy*, 145 AD2d 537, 538 [2d Dept 1988]), held that a "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity." Citing *Kluge v Fugazy*, the Court (*Katz v East-Ville Realty Co.*, 249 AD2d 243 [1st Dept 1998], held that "[p]laintiffs attempt to foreclose upon a mortgage in which he had no legal or equitable interest was without foundation in law or fact.

There was No Due Process-Process of Service from GMAC Mortgage LLC, styled GMAC Mortgage LLC vs. Corla Jackson, prior to the illegal wrongful foreclosure (...), this is recorded . There was No Summary Judgment, Remand or Supplemental Order from GMAC Bankruptcy Trustee' s-United States Bankruptcy

Court for the Southern Division Of New York, on behalf of GMAC Mortgage

Corporation ET, AL., or GMAC Mortgage LLC, to proceed with an illegal foreclosure action without Due Process-Service of Process, filed in District Court under case (...) prior to the illegal wrongful foreclosure (June 1, 2008/2019).

The law is well-settled that a void order or judgement is void even before reversal", VALLEY v. NORTHERN FIRE & MARINE INS. CO., 254 U.S. 348, 41 S. Ct. 116 (1920) "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." WILLIAMSON v. BERRY, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850).

#### History

1. November . . . the Plaintiff-Appellant EMIABATS executed a Vendors Lien Deed between the owners Emiabatas. Filed under Instrument Number is . . . , book . . . , page 1847, in Travis County Probate Court.
2. May 26, 2004 the Plaintiff-Appellant EMIABATS executed a mortgage with Option One Mortgage Corporation, to pay off her Vendor's Lien Deed under Instrument Number . . . , book . . . , page 13 The Release-Satisfaction of the Vendors Lien Deed was (Paid In Full) on June 3, 2004 and recorded June 10, 2004, under Instrument Number **2004042905** Book **565605** Page**1909**, in Travis County Probate Court..

The Mortgage Contract Agreement executed (May 26, 2000) is between the Plaintiff Appellant EMIABATS Mortgage and Option One Mortgage Corporation under loan number (**101024313**) servicing number (**443580-6**). Also, Home Loan Cor., DBA EXPANDED (**Loan# 2002-6289**) for Property 508 Evening Grosbeak Drive Pflugerville TX.

The Mortgage Contract Agreement is based upon all the following terms and conditions executed in the Mortgage Contract Agreement filed ( . . . ) under Instrument . . . Book . . . page . . . , in Travis County Probate Court.

3. September 2004: A Natural Disaster Occurred (Hurricane Ivan) Shifted the Roof and its Structure after the Trusses Broke Lose, which was an insured covered loss.

The Appellate Division, Second Department (Kluge v Fugazy, 145 AD2d 537, 538 [2d Dept 1988]), held that a "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity." Citing Kluge v Fugazy, the Court (Katz v East-Ville Realty Co., 249 AD2d 243 [1st Dept 1998], held that "[p]laintiffs attempt to foreclose upon a mortgage in which he had no legal or equitable

interest was without foundation in law or fact. GMAC Mortgage LLC wasn't the owner of the property when they obtain all the illegal orders on arrearages dated back to (2005-2006). They are a Servicer, who could not file a cause of action and more under their fabricated mortgage (0835002124) they illegally created in (2005) without lack of standing.

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 28 U.S.C.A., U.S.C.A. Const. Amend. 5 – Klugh v. U.S., 620 F. Supp. 892 (D.S.C. 1985). Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, City of Lufkin v. McVicker, 510 S.X.2d 141 (Tex.Civ.App.-Beaumont 1973). When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, Omer. V. Shalala, 30 F.3d 1307 (Colo. 1994).

Wells Fargo v. Erobobo, published held: "The assignment of the Defendant's note and mortgage, having not been assigned from the Depositor to the Trust, is therefore VOID as in being in contravention of the PSA.

See: Governed Laws and Security Laws under Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 and Section 21C of the Exchange Act of 1934 and Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b20, 13a-1, 13a-11, 13a-13-using deceptive practices and more.

Wells Fargo, Litton Loan v. Farmer, 867 N.Y.S.2d 21 (2008). "Wells Fargo does not own the mortgage loan. .. Therefore, the. .. matter is dismissed with prejudice.

When appeal is taken from a void judgment, the appellate court must declare the judgment void. Because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. See El-Kareh v. Texas Alcoholic Beverage Comm'n, 874 S.W.2d 192, 194 (Tex. App.--Houston [14th Dist.] 1994, no writ); see also Evans v. C. Woods, Inc., No. 12-99-00153-CV, 1999 WL 787399, at \*1 (Tex. App.--Tyler Aug. 30, 1999, no pet. h.).

**FRAUD UPON THE COURT:** In the United States, when an officer of the court is found to have fraudulently presented facts to court so that the court is impaired in the impartial performance of its legal task, the act, known as "fraud upon the court", is a crime deemed so severe and fundamentally opposed to the operation of justice that it is not subject to any statute of limitation. Officers of the court include lawyers, judges, referees, and those appointed; guardian ad litem, parenting time expeditors, mediators, rule 114 neutrals,

evaluators, administrators, special appointees, and any others whose influence are part of the judicial mechanism. Fraud upon the court" has been defined by the 7th Circuit Court Of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers." A "void" judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen old wound and once more probe its depths. And it is then as though trial, and adjudication had never been. Fritts v. Krugh, Supreme Court of Michigan, 92 N.W.2d 604, 354 Mich. 97 (10/13/58). Under Federal law, which is applicable to all states, the U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers."

Section 35-10-9: Sales contrary to article null and void. All sales of real estate, made under powers contained in mortgages or deeds of trust contrary to the provisions of this article, shall be null and void, notwithstanding any agreement or stipulation to the contrary. (Code 1907, \*4134; Code 1923, \*7849; Code 1940, T. 7, 5561.).

Since the trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral attack Ex parte Williams, No. 73,845 (Tex.Crim.App. 04/11/2001). "A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). Section 6-9-147: Setting aside of sales by courts. Courts have full power over their officers making execution or judicial sales, and whenever satisfied that a sale made under any legal process is infected with fraud, oppression, irregularity, or error to the injury of either party, the sale will be set aside. (Code 1907, \*4134; Code 1923, 57849; Code 1940, T. 7, 561.).

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury.... It is where the court or a member is corrupted or influenced, or influence is attempted or where the judge has not performed his judicial function thus where the impartial functions of the court have been directly corrupted.

Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 28 U.S.C.A., U.S.C.A. Const. Amend. 5 Klugh v. U.S., 620 F. Supp. 892 (D.S.C. 1985). The Appellate Division, Second Department (Kluge v Fugazy, 145 AD2d 537, 538 [2d Dept 1988]), held that a "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity." Citing Kluge v Fugazy, the Court (Katz v East-Ville Realty co., 249 AD2d 243 [1st Dept 1998], held that "

Plaintiff's attempt to foreclose upon a mortgage in which he had no legal or equitable interest was without foundation in law or fact.

A void judgment is a nullity from the beginning and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring).

A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case. "A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Seidel, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001). A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999). Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, Jaffe and Asher v. Van Brunt, S.D.N.Y. 1994, 158 F.R.D. 278. We both have violations for a Void Judgment in this particular case out of Alabama. There was no Summary Judgment, Remand or Due Process Prior To The Illegal Wrongful Foreclosure (June 1, 2012).

GMAC Mortgage Et, Al., aka GMAC Mortgage LLC said they issued (DUE PROCESS) on (10/3/2012) and served on the same day which is Fraud (10/3/2012). Due Process was recorded on (10/26/2012) under case (DV-2012-902844).

Regardless Due Process was Served after the illegal wrongful foreclosure (June 1, 2012), which is a VOID JUDGEMENT. The is so strange, Due Process show it was stamped (\_\_\_\_) on a Foreclosure they did (\_\_\_\_)!

The Assignment of Mortgage in Instrument 2008050095 at Book 6409 and Page 1483 in the records of the Probate Court in Mobile County, Alabama., was created on (June 19, 2008) and was filed (July 11, 2008). The crime was initiated (January 2005) without lack of standing prior to Assignment of Mortgage prepared June 19, 2008, filed (July 11, 2008).

It is illegal to knowingly and with intent to defraud, file a bankruptcy petition or other document, or make a false or fraudulent representation, claim.

18 US 157 also applies to involuntary bankruptcies. This statute is based on the wire, mail, and bank fraud statutes. See 18 US 1341, 1343, and 1344, respectively.

\*. Perjury. 18 US 1621. Perjury is punished by a maximum of 5 years in prison. • Conspiracy. 18 US 371. Conspiracy has a maximum 5-year prison sentence (or less if the underlying crime has a lesser penalty, such as a misdemeanor).

\* Wire fraud. 18 US 1341. This offense has a possible sentence of 20 years in prison, or 30 years with a possible \$1,000,000 fine where the offense impacts a financial institution.

\* Mail fraud. 18 US 1343. Mail fraud has the same penalties as wire fraud.

\* Bank fraud. 18 US 1344. Bank fraud is a criminal offense with a possible penalty of 30 years imprisonment and \$1,000,000 fine.

\* RICO (racketeering). 18 US 1962. The sentence for a RICO charge can be 20 years' incarceration.

\* Finally, 18 US 157 prohibits any scheme to defraud another, or attempt, during bankruptcy. The sentence for this charge is a maximum of 5 years in federal prison.

It is illegal to knowingly and with intent to defraud, file a bankruptcy petition or other document, or make a false or fraudulent representation, claim. 18 US 157 also applies to involuntary bankruptcies. This statute is based on the wire, mail, and bank fraud statutes. See 18 US 1341, 1343, and 1344, respectively.

In a federal prosecution for conspiracy, the defendant is typically charged with two offenses. First, he is charged with conspiracy. Second, he is charged with the offense that he and his co-

conspirators were conspiring to commit. This is known as the object of the conspiracy. For instance, a person charged in connection with a drug or burglary.

- \*. Conspiracy against the rights of citizens. See 18 USC 241. This offense has a sentence of 10 years in prison.
- \*. Conspiring in bribery of sporting contests. See 18 USC 224.

Under 18 USC 371, a person can be charged with conspiracy based on two elements

1. An agreement to commit a criminal offense.
2. An overt act that furthers the conspiracy.

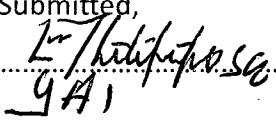
The US Attorney does not have to prove that the agreement was in writing. It can be verbal and still subject the parties to criminal liability.

It is not a violation of double jeopardy for the defendant to be prosecuted and sentenced for both the conspiracy and the offense he agreed to commit. Each is a separate and distinct offense.

A Party Affected by VOID Judicial Action Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. If an appeal is taken, however, the appellate court may declare void any orders the trial court signed after it lost plenary power over the case. "A void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Seidel, 39 S.W.3d 221, 225 (Tex. Crim. App. 2001). The Code of Alabama 1975 Section 35-10-9: Sales contrary to article null and void: All sales of real estate, made under powers contained in mortgages or deeds of trust contrary to the provisions of this article, shall be null and void, notwithstanding any agreement or stipulation to the contrary. (Code 1923, 9018; Code 1940, T. 47, /172.). In here, also applicable to Petitioner in this appeal.

For the foregoing reasons, this Court should grant this Petition for Writ of Certiorari.

Respectfully Submitted,

PHILIP EMIABATA..... ..... SYLVIA EMIABATA   
GA

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