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24-7468

ORIGINAL

In The
Supreme Court of the United States

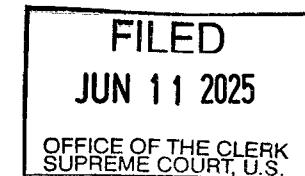
Donald Perry

Petitioner,

v.

U.S.Bank Trust N.A., as Trustee for LSF9 Master Participation Trust

Respondent.



On Petition for a Writ of Certiorari to the Massachusetts Appeals Court

Case No. 2023-P-0962

PETITION FOR A WRIT

OF CERTIORARI

Donald Perry

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QUESTIONS PRESENTED

1. Whether the Federal Deposit Insurance Corporation's (FDIC) transfer of Washington Mutual Bank (WaMu) to JPMorgan Chase Bank, N.A. in 2008 constituted an "operation of law," thereby immunizing the transaction from judicial scrutiny and extinguishing certain liabilities, or whether the transaction involved contractual and discretionary actions requiring legal and procedural oversight. As presented in this case, whether a mortgage assignment executed by a person without any authority to do so, as determined in Mass. Appeals Court case No. 19-P-1598, can be validated solely by asserting the transfer of WaMu's assets to JPMorgan Chase was an "operation of law."
2. Whether a lower court judge may override the binding findings of a higher appellate court by reissuing summary judgment based on the same evidentiary record, contrary to the rule of judicial hierarchy. Corollary, whether a panel of intermediate appellate judges may disregard a prior precedential opinion and affirm a lower court ruling in direct contradiction to an earlier remand directive, thereby eroding judicial order and the principle of vertical stare decisis.

PARTIES TO THE PROCEEDING

Petitioner: Donald Perry was the Defendant-Appellant in MA Appeals

Case 2023-P-0962

**Respondent: U.S. Bank Trust N.A., as Trustee for LSF9 Master
Participation Trust was the Plaintiff-Appellee in the case.**

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Massachusetts Appeals Court in Case No. 2023-P-0962.

OPINIONS BELOW

The opinion of the Massachusetts Appeals Court in Case No. 2023-P-0962 is unpublished and reproduced as Appendix A. The earlier relevant decision of the Massachusetts Appeals Court in Case No. 19-P-1598 is reproduced as Appendix D and the MA Housing Court's as Appendix B and E.

JURISDICTION

The Appeals Court entered its judgment on October 31, 2024. The Massachusetts Supreme Judicial Court denied review on March 14, 2025. This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U. S. Const. art. III, § 1 Vests judicial power in one Supreme Court and such inferior courts as Congress may establish. Stands for the principle of judicial hierarchy and vertical stare decisis — i.e., that lower courts cannot override higher appellate findings.

V. S. Const. amend. XIV, § 1 (Due Process Clause) "No state shall... deprive any person of life, liberty, or property

without due process of law." A court cannot allow a property interest (e.g., in real estate/mortgage) to be transferred or foreclosed based on an unauthorized or legally defective assignment, without procedural safeguards.

12 U.S.C. § 1821(d)(2)(G)(i)(II) Transfers from the FDIC do not constitute an operation of law.

28 U.S.C. § 1257(a) Authorizes the U.S. Supreme Court to review final judgments or decrees rendered by the highest court of a state.

STATEMENT OF THE CASE

Petitioner is the homeowner in a foreclosure action initiated by U.S. Bank Trust N.A., as Trustee for LSF9 Master Participation Trust, based on an allegedly chain of assigned mortgages beginning with Washington Mutual Bank (WaMu). In 2019, the Massachusetts Appeals Court (Case No. 19-P-1598) vacated summary judgment previously granted to U.S. Bank, citing that a mortgage assignment in the chain was executed by an individual without any authority to do so and that the bank failed to prove possession of the original promissory note.

On remand, the Housing Court judge ordered U.S. Bank to cure the defects. The bank failed to do so. Instead of resolving the issues, U.S. Bank refiled for summary judgment before a different judge but being the same judge who had largely presided over the first motion for summary judgment and had issued many interim rulings. Without recusing herself

this judge allowed the motion to be filed. Despite acknowledging that the deficiencies remained unresolved and without any new material evidence she granted the renewed motion. Her ruling directly contradicted the appellate court's prior mandate.

In the 2023-P-0962 appeal, Petitioner raised this procedural irregularity, along with evidence of inaccurate and false filings submitted by bank counsel. Nonetheless, the second Appeals Court panel affirmed the Housing Court's judgment, relying on the assertion that WaMu's sale to JPMorgan Chase occurred "by operation of law" via the FDIC's receivership.

Petitioner challenges this assertion, noting that the FDIC's transaction was not a statutorily mandated event but rather a discretionary contractual agreement—the P&A Agreement. Under *Kim v. JPMorgan Chase Bank*, 493 Mich. 98 (2012), JPMorgan's status as acquirer does not excuse its burden to establish legal ownership of assets.

This petition addresses both the mischaracterization of the FDIC transaction and the dangerous precedent of judicial disregard for appellate rulings.

Petitioner, Donald Perry, disputes the legality of the foreclosure on his property located at 15 Russell Street, Hull, Massachusetts.

On or about 2005, Mr. Perry entered into a mortgage agreement with Washington Mutual Bank (WAMU).

1. In 2008, WAMU failed and was placed into receivership by the FDIC. The plaintiff's mortgage was not in default at that time.

2. Without any opportunity for Mr. Perry to purchase his own mortgage, the FDIC sold his loan to JPMorgan Chase Bank for a fraction of its value being sold for approximately 1/2 of one penny on the dollar (approximately \$2,000).

4. Mr. Perry did not default in 2008 and continued to make monthly payments of approximately \$2,000 until 2014, when he fell behind due to illness.

5. Pursuant to a purchase and assumption agreement, the FDIC's ability to transfer WAMU assets to Chase ended on September 25, 2014.

6. Nonetheless, on February 13, 2015, a mortgage assignment from WAMU to Chase was executed by an individual who, according to a notary jurat and later findings of the Appeals Court, lacked the legal authority to do so. See Appendix (A.) pg.25

7. A subsequent assignment from Chase to Bayview Loan Servicing (purportedly U.S. Bank's predecessor) was dated October 8, 2014—before Chase even purportedly held the mortgage. See A. pg 25

8. U.S. Bank proceeded with foreclosure. Mr. Perry contested the action.

9. In the Housing Court (Case No. 18H83SP01489PL), and the subsequent appeal, U.S. Bank's attorneys submitted false documentation asserting that the mortgage assignment occurred on November 14, 2011. (A. pg 25)

10. On October 22, 2018, the Housing Court granted summary judgment in favor of U.S. Bank.

11. Mr. Perry filed a timely appeal on October 31, 2018.

12. While the appeal was pending, U.S. Bank listed the property for sale and attempted to auction it on multiple occasions.

13. On February 18, 2021, in *U.S. Bank v Perry*, No. 19-P-1598, the Massachusetts Appeals Court vacated the summary judgment, holding that the bank failed to demonstrate possession of the original note and that key mortgage assignments were executed by someone without any authority to do so. (A. pg 25)

14. On remand, Judge MaryLou Muirhead ordered U.S. Bank to provide full discovery to the defendant by April 7, 2021, explicitly stating, "I would be shocked if you do."

15. On April 9, 2021, U.S. Bank submitted discovery materials to the Housing Court that were identical to those from the original summary judgment. These materials failed to establish possession of the original

note or lawful mortgage assignments. They were never served on the defendant.

16. Judge Muirhead issued no further rulings or enforcement orders.

17. On September 14, 2022, Judge Anne Kenney Chaplin, who had overseen much of the initial summary judgment proceedings, permitted U.S. Bank to file a second motion for summary judgment.

18. On October 25, 2022, Judge Chaplin ruled that discovery was closed.

19. On February 21, 2023, Judge Chaplin issued an interim order acknowledging that U.S. Bank had not addressed whether it held the note at the time of foreclosure and had not resolved the assignment issue flagged by the Appeals Court. (A. pg 34)

20. On May 3, 2023, despite acknowledging these failures, Judge Chaplin granted U.S. Bank's second motion for summary judgment.

21. Mr. Perry appealed on May 11, 2023 (Case No. 23-P-0962). He also later filed a motion to dismiss the case due to the failure of the lower court to uphold the mandate of the Appeals Court.

22. In September 2024, a new Appeals Court panel (Justices Blake, Walsh, and Hodgens) heard argument. At oral argument: Justice Blake admitted she had not read Mr. Perry's motion to dismiss. Justice Walsh acknowledged that bank counsel had submitted false information, but rebuked them, not for the misconduct itself, but for essentially making banks look bad.

23. On October 31, 2024, the Appeals Court panel denied the motion to dismiss and affirmed the second summary judgment without addressing the failure to comply with its prior order. The decision vaguely invoked an "operation of law" without legal explanation, failing to rebut contrary authority such as *Kim v. JPMorgan Chase Bank, N.A.*, 493 Mich. 98 (2012).

24. Mr. Perry sought further appellate review by the Massachusetts Supreme Judicial Court (SJC), which denied his application on March 14, 2025.

25. He gave notice that he would file a petition for writ of certiorari to this Court within the 90-day deadline from the date of the SJC's denial.

REASONS FOR GRANTING THE WRIT

I. THE MASSACHUSETTS DECISION CONTRADICTS WELL-ESTABLISHED LAW

The Massachusetts Appeals Court's decision in 2023-P-0962 flatly contradicts both its own earlier holding in Case No. 19-P-1598 and persuasive authority from the Michigan Supreme Court in *Kim v. JPMorgan Chase Bank, N.A.*, 493 Mich. 98 (2012). In 19-P-1598, the Appeals Court unequivocally held that the assignment of mortgage was executed by a person without any authority to do so. That binding finding was not—and could not be—reversed absent new evidence or controlling precedent. Nonetheless, the 2023 Appeals Court panel inexplicably concluded that this unauthorized assignment could be rendered valid simply by invoking the phrase “operation of law” in reference to the FDIC’s transfer of Washington Mutual assets to JPMorgan Chase. This maneuver not only contradicts the factual record and the law but also signals an alarming disregard for the rule of law and internal judicial consistency. The Appeals Court decision in 2023-P-0962 disregards its prior opinion in 19-P-1598 and misapplies precedent from Kim and Ibanez. A finding of unauthorized mortgage assignment cannot be reversed by invoking a transaction labeled as an “operation of law” when the facts show a negotiated P&A Agreement.

THE FDIC'S P&A AGREEMENT IS NOT AN OPERATION OF LAW

The FDIC's transfer of WaMu assets was discretionary and implemented via contract, not as a statutory inevitability. Unlike bankruptcy proceedings or statutory mergers, nothing in FIRREA automatically transferred all of WaMu's interests. The presence of a negotiated P&A Agreement, excluding specific liabilities, further underscores that this was a voluntary transaction—not an operation of law.

The Massachusetts Appeals Court's decision in *2023-P-0962* conflicts with its own prior ruling in *19-P-1598*, where it found the mortgage assignment invalid due to execution by an unauthorized signatory. That decision was never reversed or modified, and the record on remand remained unchanged. The trial court was thus bound by that finding.

Yet, the lower court granted summary judgment a second time, and the Appeals Court affirmed, citing the FDIC's transfer of WaMu's assets as curing the invalid assignment. This reasoning conflicts with multiple authorities.

In *Kim v. JPMorgan Chase Bank, N.A.*, 493 Mich. 98 (2012), the Michigan Supreme Court emphasized that the mere acquisition of assets from the FDIC is insufficient to establish ownership of a particular loan.

It stated “ In selling WaMu's assets to defendant, the FDIC relied on a different statutory provision, 12 U.S.C. § 1821(d)(2)(G)(i)(II), which allows the FDIC to “transfer” the assets and liabilities of failed institutions.

Hence, although the FDIC could have effectuated a merger in reliance on subsection (d)(2)(G)(i)(I), it explicitly chose not to do so. Indeed, the FDIC submitted an affidavit to the Court that describes the transaction, specifically citing the subsection of the statute authorizing transfers, rather than the subsection authorizing mergers. Unlike the dissent, we will not conclude that a merger took place when the FDIC so clearly chose to engage in a different type of transaction under a different statutory provision. Applying this proposition, we hold that the transfer of WaMu's assets from the FDIC to defendant did not take place by operation of law.

Defendant acquired WaMu's assets from the FDIC in a voluntary transaction; defendant was not forced to acquire them. Instead, defendant took the affirmative action of voluntarily paying for them. Had defendant not willingly purchased them, it would not have come into possession of plaintiffs' mortgage. WaMu's assets did not pass to defendant “without any act of [defendant's] own” or “regardless of [defendant's] actual intent.”

Merdzinski, 263 Mich. at 175, 248 N.W. 586. Accordingly, the Court of Appeals correctly concluded that defendant did not acquire WaMu's assets by operation of law.”

THE LAW IS UNSETTLED AND INCONSISTENTLY APPLIED

Federal and state courts lack uniformity in interpreting FDIC receivership transfers. The absence of a definitive ruling from this Court has led to confusion and contradictory outcomes that impair due process and undermine real property law.

II FAILURE TO ADHERE TO JUDICIAL HIERARCHY UNDERMINES THE RULE OF LAW

When the Housing Court judge issued a second summary judgment contrary to the Appeals Court's findings in 19-P-1598, she violated the principle of vertical stare decisis. Her actions, later affirmed in 2023-P-0962, signal that lower courts may revisit appellate mandates based on personal disagreement. This undermines judicial order in all 50 states and threatens public confidence in appellate review.

The Massachusetts Appeals Court vacated judgment and remanded for resolution of two discrete issues. The plaintiffs did not seek further review of that ruling. They were then given a full opportunity to cure those issues at the remand hearing. They failed to do so. That failure was explicitly recognized by Judge Chaplin herself in her Interim Order. Between that Interim Order and the final judgment, no facts changed—discovery had been closed. What changed was not the record, but Judge Chaplin's

interpretation of that record, supplanting the prior appellate court's legal conclusions with her own.

The reliance of the citizenry, nationwide, on the very judicial system demands that a trial court may not disregard a higher court's mandate. In *MacDonald v. MacDonald*, 407 Mass. 196, 202–03 (1990), the Mass SJC made clear: “Disregard of this court's mandate by a lawyer would be contemptuous; it can hardly be excused when the reckless action emanates from a judicial officer... If a judge in the exercise of judicial power loses sight of these principles, the result is autocratic rule by lawless judicial action.” See also *Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 168 (1939) (“[F]ew legal precepts are as firmly established as the doctrine that the mandate of a higher court is controlling as to matters within its compass”).

The law allows exceptions only in extraordinary circumstances: (1) an intervening change in controlling legal authority; (2) new and previously undiscoverable evidence; or (3) a manifest error in the prior ruling that would cause serious injustice if left uncorrected. See *United States v. Aramony*, 166 F.3d 655, 662 (4th Cir. 1999), quoting *United States v. Bell*, 5 F.3d 64, 67 (4th Cir. 1993). None of those conditions are present here.

Accordingly, the lower court lacked authority to reach a different result than required by the Appeals Court. Absent new evidence or

direction, a trial court cannot reconsider settled findings.

Judge Chaplin's second summary judgment ruling was thus not based on new materials but a reinterpretation of unchanged facts already adjudicated by the appellate court. Her action defied the hierarchy of judicial review. To permit such decisions to stand would be to ratify a precedent that disregards the rule of law.

This Court should grant certiorari to affirm that when an appellate court issues a mandate, it is binding—not merely advisory. The principle of judicial subordination demands no less.

III THIS CASE IS AN IDEAL VEHICLE FOR RESOLVING THE ISSUE

The legal record is well-developed, and the facts cleanly frame two interrelated questions of national import: the legal nature of FDIC asset transfers and the scope of judicial compliance with appellate mandates.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted, pro se

Donald Perry

Donald Perry

Date: June 11, 2025