

In the
Supreme Court of the United States

JOHN P. BAILEY,

Petitioner,

v.

U.S. BANK, N.A., TRUSTEE, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
District Court of Appeals of Florida, Second District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

These question presented are related to violations of RESPA or 18 U.S.C. § 1344.

1. Why was John Bailey, Borrower, Denied his legal right to receive a copy of the Assurant Insurance Claim Information received by Fay Servicing on November 24, 2022 and E-Mailed to Borrower on March 22, 2023, one half day prior to the March 23, 2023 Hearing for Mortgage Foreclosure?.
2. Why did Fay Servicing choose to violate RESPA Regulation X by failing to notify John Bailey of the Assurant Insurance Claim Information \$179,000.00 check for the JOHN BAILEY FUNDS received on November 24, 2022?
3. Why did Fay Servicing deposit the John Bailey funds check into his escrow account without his required notice and signature?
4. Why did Fay Servicing, Plaintiff, U.S. Bank, N.A., Trustee, allow their client LSF9 Master Participation Trust to use the John Bailey Escrow Account Funds to repair the fire damaged home with no required notification and approval from John Bailey, borrower, and property owner, in accordance with Assurant Claim Information presented to Plaintiff on November 24, 2022?
5. Why did Fay Servicing and U.S. Bank, N.A., Trustee, Deny John Bailey his legal right to use the John Bailey account funds in accordance with the Fannie Mae/Freddie Mac Mortgage Insurance Policy Item 5. to reduce the mortgage amount, and use his funds to pay the remaining November, 2022 mortgage

and fees balance due and payable to satisfy the mortgage and foreclosure case?

6. Did the Plaintiff, Servicer, and Mortgage Owner violate Florida Statute 812.014, Theft. (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently: a) Deprive the other person of a right to the property or a benefit from the property. (b) Appropriate the property to his or her own use or to the use of any person not entitled to use the property?

7. Can a family home owner and mortgage borrower achieve Equal Justice Under The Law when the Civil Court and the DCA fail to enforce Florida and Federal Law violations conducted by the Plaintiff, and Servicer by allowing the mortgage owner to use the owners insurance funds to remodel his home, deny the borrower his legal right to pay the mortgage and fee amount due and payable to satisfy the mortgage and fee amount due and payable to cancel the mortgage foreclosure, in order to sell the home for a much greater amount than the mortgage amount?

LIST OF PROCEEDINGS

Circuit Court, Sixth Judicial Circuit,
Pinellas County, Florida

No. 13-011402-CI

U.S. Bank Trust, N.A., as Trustee for LSF9 Master
Participation Trust, *Plaintiff*, v. John P. Bailey; Et Al.,
Defendants.

Final Order: July 12, 2023

District Court of Appeal of Florida Second District
No. 2D2023-0856

John P. Bailey, *Appellant*, v. U.S. Bank Trust, N.A.,
as Trustee for LSF9 Master Participation Trust
Unknown Spouse of John P. Bailey; Unknown
Tenant 1; and Unknown Tenant 2, *Appellees*.

Per Curiam Affirmed: June 5, 2024

Florida Rule 9.330 Order Denying Motion for
Clarification: Aug 13, 2024

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.



OPINIONS BELOW

The final order of the Pinellas County, Florida Circuit Court, dated July 12, 2023 is included in the Appendix at App.4a. The per curiam affirmed decision of the Florida District Court of Appeals, Second District (Second DCA), dated June 5, 2024 is included at App.1a. The Order denying a motion for clarification, dated August 13, 2024, is included at App.2a.



JURISDICTION

The Second DCA entered its per curiam affirmed decision on June 5, 2024. App.1a. The Petitioner sought the reasoning of the Second DCA in a motion for clarification, but was denied on August 13, 2024. App.2a. This appellate decision is not reviewable by the Florida Supreme Court Florida Const. Art. V. § 3(b)(3) which provides for only limited review.

The Petitioner initially mailed the Court 40 copies of his petition on November 12, 2024. (See additional information below) Petitioner now follow up with a compliant Rule 33.1 petition filing in the booklet form.

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

The Petitioner was denied Legal counsel because of Hurricanes Helene and Milton, and counsels prior case workloads. Mailing dates for Amended Petition: November 10, 2024, Sunday, November 11, 2024 Veterans Day, November 12, 2024 Mailing Date.

Prospective legal counsel stated a \$1,000 per hour Amended Petition preparation fee with no hourly time amount limit, and no maximum legal cost amount, and declined to represent the Petitioner because of the time required for the case research and document preparation, the excessive legal fee cost for John Bailey, and his case would prohibit their legal work for their current cases. Note: The case history and appeal information was to large for numerous law firms at that time.

On November 12, 2024 the Petitioner sent forty three 8 1/2 x 11 Bound Booklets to the Clerk of Court for the United States Supreme Court which were received by the Clerk's Office on November 14, 2024, via U.S. Post Office.

The Petitioner failed to receive a Notice of Acceptance or Denial for the Petition Booklets. The Petitioner acknowledges the improper Booklet Sizes. In accordance with the Clerk of Court's 60 Day Rule, the Petitioner is sending the new Petition to the Court.

The disabled veteran Petitioner requests the Court to accept the new Petition and the 40 Booklets, 6 1/8 x 9 1/4, and one unbound 8 1/2 x 11 copy, and the \$300 Court Check.

The disabled veteran Petitioner spent well over one hundred twenty hours reviewing U.S. Supreme Court document preparation guidelines, establishing material case facts, and Plaintiffs Federal Law Violations, required to establish the basis for the petition for writ of certiorari.

The forty 6 1/8 x 9 1/4 Booklets, one unbound 8 1/2 x 11 document, and \$300 check comply with the Supreme Court Procedures created by the Administrative Office of the U.S., and Rules of the U.S. Supreme Court.

The Material Case Facts establish the Plaintiff, Servicer, and Mortgage Owners, Violations Of Federal Law, which established the basis for the Honorable Court To Rescind the DCA Per Curiam, Affirmed Ruling, or Determine if the Petition should be sent to a Court other than the Second District Court of Appeals.



STATUTORY AND REGULATORY PROVISIONS INVOLVED

18 U.S.C. § 1344. Bank Fraud.

Whoever knowingly executes, or attempts to execute a scheme, or artifice (2) to obtain any of the monies, funds, credits, assets, Securities, or other property owned by, or under the custody or control of a financial institution, by means of false or fraudulent pretenses, representations, or promises, shall be fined not more than \$1,000,000 imprisoned not more than 30 years, or both.

28 U.S.C. § 1257

- (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.
- (b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals

Fla. Stat. 812.014. Theft.

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to use the property.

12 CFR Part 1024 (Regulation X)

Regulation X, the Real Estate Settlement Procedures Act is included at App.11a.

INTRODUCTION

Petitioner's Motion to File Replacement Petition for Writ of Certiorari was in the interests of justice because it enabled this Court to review and consider the New and Amended prior Petition Items of Importance stated in the current Petition prior to determining whether their final decision should reverse and send the case to a lower court for review and ruling.

1. The Court's Granting of Petitioner's Motion To Amend Petition will not cause Respondent any cognizable prejudice.

2. Material case facts established the Plaintiff and Servicers allowance for LSF9 Master Participation Trust to accomplish their Goal to use the Borrower's Insurance Funds with No Legal Basis to remodel the home for Free, and sell the home for an amount much larger than their mortgage amount.

3. The DCA June 5, 2024 Per Curiam, Affirmed Ruling with No Written Opinion failed to state the legal for the Plaintiff to deny the Borrower his legal right to use His Insurance Funds in accordance with Mortgage Item 5. Insurance Policy to reduce the mortgage amount and pay the remaining mortgage balance to Satisfy the Mortgage Loan

4. Florida law allows a Court to issue a Per Curiam, Ruling with No Written Opinion when Material Case Facts and Federal Law have been violated, the Florida Supreme Court will not accept a Per Curiam case, which created the Petitioner's requirement to

present his Petition to the Honorable U.S. Supreme Court for review.

5. The Mortgage Document, the Fourteenth Amendment to the United States Constitution, establish John Bailey's Due Process Right to use His \$179,007.76 Fees to reduce the November 22, 2022 mortgage amount, and to make a Cash Payment for the mortgage and fee balance due and payable to Satisfy the mortgage and Foreclosure Case.



STATEMENT OF THE CASE

A. Case Law

Davis v. State, attempted to have the United States Supreme Court review our Affirmance. That court does have the power, by writ of certiorari, to review a decision from a Florida District Court of Appeal even when no written opinion was issued. App.1a. The District Court of Appeals PCA Non Answer Ruling denied the Appellant's right to present his case to the Florida Supreme Court for review. *Jenkins v. State* 385, 2nd 1356, 1359 (1980). App.2a.

DCA PER CURIAM, Affirmed RULING, FLORIDA APPELLATE PROCEDURE 9:330, JURISDICTIONAL STATEMENT UNDER 28 U.S.C., 1257, FLORIDA RULE OF APPELLANT PROCEDURE 9:330 TABLE OF AUTHORIZATIONS

The DCA June 5, 2024 PER CURIAM Affirmed Rulings issued by Judges CASANUEVA, SILBERMAN, and BLACK, JJ failed to state an Opinion, the legal case facts, and Court rulings that established the

basis for their Per Curiam, Affirmed Ruling. Case Documents: DCA 2D2023-856, Civil Case No. 13-011402-CI, December 18, 2023 Amended Appellant's Initial Brief, January 30, 2024, Appellee Answer, and February 19, 2024 Appellant's Answer To Appellee's January 30, 2024 Answer.

The Appellant's DCA 2D2023-856 June 24, 2024 Revised Motion and Case Law for the DCA June 5, 2024 Per Curiam Ruling was Denied by DCA.

Davis v. State, attempted to have the United States Supreme Court review our Affirmance. That court does have the power, by writ of certiorari, to review a decision from a Florida District Court of Appeal even when no written opinion was issued. App.1a.

The District Court Of Appeals PCA Non Answer Ruling denied the Appellant's right to present his case to the Florida Supreme Court for review. *Jenkins v. State* 385, 2nd 1356, 1359 (1980).

B. Florida Rule of Appellate Procedure Rule 9.330, Motion for Rehearing, Clarification, & Written Opinion. *Violations of Table of Authorities*

The February 21, 2023 Fay Servicing letter to John Bailey, Borrower, Confirmed His Legal Ownership of the Assurant November 16, 2022 JOHN BAILEY FUNDS in His Account to hire a contractor to remodel his home, or use the Funds To Satisfy the Mortgage and Fee Debt with additional John Bailey Funds prior to the Civil Court's March 23, 2023 Foreclosure Ruling, the June 16, 2024 Final Mortgage Foreclosure Ruling, and the DCA June 5, 2024 PER CURIAM, Affirmed Ruling.

Appellant's August 7, 2024 Appellate Procedure Rule 9.330 document presented to the District Court Of Appeal Of The State Of Florida, Second District, complied with the Court's written statement and all future Motions are to comply with Rule 9.330.

Appellate Rule 9.330, Motion for Rehearing, Clarification, and Written Opinion

(A) Motion For Rehearing, No Ruling, (Approved). Material Case Facts established on November 24, 2024 Fay Servicing received the Assurant Insurance Company's Claim Information and check for the JOHN BAILEY FUND in the amount of \$179,007.76 and deposited the check into their bank account without John Bailey's Required Signature on the check for their corporate gain.

(B) Motion for Clarification, Ruling Denied. The DCA June 5, 2024 PCA Ruling With No Written Opinion needs Clarification based on the Plaintiffs Denial of Borrower's legal right to use the \$179,007.76 John Bailey Funds for a mortgage payment in accordance with the November 7, 2022 Fay Mortgage Statement for an Accelerated Amount Due of \$543,690.00. John Bailey's \$350,000, \$14,683.04 Cash payments and the \$179,007.76 John Bailey Funds equal the full payment amount Due and Payable to Satisfy the November, 2022 home Mortgage balance for Lender's Financial Gain

(C) Motion for Written Opinion. No Ruling, (Approved). November 24, 2022 Fay Servicing received the Insurance Funds which named the Lender and John Bailey as Payees. All payees must endorse the check prior to depositing. Fay Servicing and Legal Counsel failed to notify John Bailey, the check payee

required to endorse the check prior to Fay depositing the check into their account. Plaintiff and Fay allowed the Mortgage Owner to use the funds to remodel the home with No Building Permit and Legal Authorization.

August 13, 2024, Case No. 2D2023-0856,
ORDER OF COURT: Appellant's motion for clarification is denied. I HEREBY CERTIFY that the foregoing is a true copy of the original order. Mary Elizabeth Kuenzel, Clerk.

C. CIVIL CASE ISSUES

The Plaintiff and Mortgage Servicer allowed the mortgage owner to use the Borrower's Insurance Escrow Funds to remodel the home prior to the June 16, 2023 Mortgage Foreclosure Hearing. During the Hearing the Civil Court Judge asked Plaintiffs legal counsel, Why did your client use the Funds to remodel the home? Your Honor, the mortgage allowed us to remodel the home. The Judge Ruled: "CASE CLOSED."

The Appellant Borrower was denied his legal right to ask Legal Counsel, Please state the Mortgage Page and Paragraph that authorized your client to use the Borrower's Escrow Funds to remodel the home.

*The Mortgage Owner was allowed to Violate the Freddie Mac/Fannie Mac Uniform Mortgage Loan, "if the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument," (App.16a) and Laws of Federal Fraud which define fraud as any intentional deception

or misrepresentation used to benefit yourself or someone else," for Their Financial Gain.

D. John Bailey Denied His Insurance \$179,007 .76 Escrow Funds *Violations of Federal Law Table of Authorities. App.13a, App.16a.

Fay Servicing, LLC and Plaintiff Denied John Bailey a copy of the CLAIM INFORMATION document from November 24, 2022 until their March 22, 2023 afternoon E-Mail sent to John Bailey prior to the March 23, 2023 Foreclosure Hearing.

The Plaintiffs actions established the Mortgage Owners intention to Foreclose on the Mortgage, and use the John Bailey FREE FUNDS to remodel the home, and Sell the home for a Larger Amount than the Mortgage Amount and Fee Balance.

Plaintiff and Fay Servicing LLC denied the Borrower his legal right to receive the Assurance CLAIM INFORMATION document in November, 2022 which stated the JOHN BAILEY ESCROW ACCOUNT FUND amount of \$179,007.76 allowed to reduce the mortgage amount.

\$ 543,690.80	Fay Servicing November, 2022 Mortgage Balance
(-) 179,000.00	JOHN BAILEY ASSURANT FUND FEES
<u>(-) 364,683,04</u>	JOHN BAILEY NOVEMBER, 2022 CASH PAYMENT
= \$ -0-	BALANCE DUE AND PAYABLE

January, 2023 Joe Fay Servicing Agent, called John Bailey and asked him, "What are you going to do

with your \$179,007.76 Funds In Your Account?" He replied, What Funds? Please Send Me The Information. No information was received

18 U.S.C. § 1344. Bank Fraud.

Whoever knowingly executes, or attempts to execute a scheme, or artifice (2) to obtain any of the monies, funds, credits, assets, Securities, or other property owned by, or under the custody or control of a financial institution, by means of false or fraudulent pretenses, representations, or promises, shall be fined not more than \$1,000,000 imprisoned not more than 30 years, or both. *See above, p. 3.*

Laws of Federal Fraud. Define fraud as any intentional deception or misrepresentation used to benefit yourself or someone else.

Borrower's Mortgage Satisfaction Right was Denied in accordance with Mortgage Item 23. Release. "Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any Recordation costs."

E. JANUARY 30, 2024 APPEELEE'S ANSWER BRIEF, PAGE 20,21

Bailey argues he had a legal right to apply the proceeds to the balance owed, use the proceeds to direct repairs in the manner he wanted, or have the proceeds accepted as a short payoff of the entire amount owned.

F. VIOLATIONS OF FEDERAL LAW

Fay Servicing, LLC Denied the Borrower the right to use the Assurant Insurance Claim Information \$179,007.76 Funds in accordance with Fannie Mae /Freddie Mac Uniform Mortgage Loan Item 5. Insurance Policy Page 6, and Page 7, Paragraph 3: "If restoration or repair is not economically feasible or Lender's Security would be lessened, the proceeds, shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower."

Appendix D. CASE FACT. Lender's Security would be increased after the Insurance Funds reduced the mortgage amount and the Borrower paid the remaining mortgage balance due and payable to Satisfy and Foreclosure Case.

Laws on Federal Fraud. Federal Law defines fraud as any deception or misrepresentation used to benefit yourself or someone else. *See above p. 3.*

Fay Servicing, LLC Violated the REAL ESTATE SETTLEMENT PROCEDURES ACT, RESPA, by failing to provide John P. Bailey, Borrower, with a timely disclosure of the home's November 16, 2022 Assurant Insurance Company CLAIM INFORMATION fire damage document received on November 24, 2022 which stated the \$179,007.76 check made payable to Fay Servicing, Payee, and John Bailey, Payee, The act also prohibits specific practices, such as kickbacks, and places upon the use of escrow accounts.

"It also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid by the borrower and what is paid out of the Account by the servicer. App.11a.

Objectives - 12 CFR 1024.38(b). Servicers are required to maintain policies and procedures that are reasonably designed to achieve the following objectives. App.11a.

1. Accessing and providing timely and accurate information. The servicer policies and Procedures must be reasonably designated to ensure that the servicer can:
 - a. Provide accurate and timely disclosures to the borrower.
 - b. Investigate, respond to, and make corrections in response to borrowers' complaints. These policies and procedures must be reasonably designed to ensure that the servicer can promptly obtain information from service providers to facilitate investigation and correction of errors resulting from actions of service providers.
 - c. Provide a borrower with accurate and timely information and documents in response to the borrower's request for information with respect to the borrower's mortgage loan.

App.11a-12a.
Fay Servicing statement for the account of JOHN BAILEY. Your mortgage lender is included as a payee on this check. All payees must endorse prior to depositing. Please contact your lender for instructions on obtaining their endorsement. Note: The Payees were Fay Servicing and John Bailey.

Fay Servicing chose to endorse the JOHN BAILEY Fund check and deposit the check into their account without John Bailey's knowledge and required

signature, and allowed the Plaintiff and or the Mortgage Owner to use the funds to repair the home's fire damage for their Corporate Gain with No Building Permit. The City, of Seminole stopped their improper construction work. *Fay Servicing Violated RESPA Regulation X. App.11a. Laws on Federal Fraud. Federal Law defines fraud as any deception or misrepresentation used to benefit yourself or someone else. *See above at p.3.*

Fay wrote their February 21, 2023 letter to John Bailey one month prior to the U.S. Bank, N.A, Plaintiff's March 23, 2023 Mortgage Foreclosure Hearing date. Loan Number: 0000277644. Property Address: Greenbrier Drive, Seminole, Florida 33777. If the loan is delinquent all disbursed funds will be made payable to yourself and your contractor, the waiver of lien document will need to be completed by the contractor and submitted. Insurance Claim Specialist, Fay Servicing, LLC. App.13a.

G. February 21, 2007, Bank of America, N.A., Fannie Mae/Freddie Mac Uniform Mortgage Loan

Mortgage Insurance Policy 5., Page 6; Page 7, Paragraph 3. If restoration or repair is not economically feasible, OR LENDER'S SECURITY WOULD BE LESSENED, THE INSURANCE PROCEEDS SHALL BE APPLIED TO THE SUMS SECURED BY THIS SECURITY INSTRUMENT, WHETHER OR NOT THEN DUE, WITH THE EXCESS IF ANY, PAID TO BORROWER.
App.16a.

Borrower's Right To Reinstate After Acceleration, Paragraph Number 19, Page 12, 13. If Borrower meets

certain conditions, Borrower shall have the right to have enforcement of the Security Instrument discontinued at any time prior to earliest (a) five days before (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or *(c) Pays All Expenses Incurred In Enforcing This Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cure fault of any other covenants or agreements *(c) Pays All Expenses Incurred in enforcing this Security Agreement, but not limited to reasonable attorney fees, property inspection and valuation fees incurred for the purpose of protecting Lender's interest in the property and rights under this Security Instrument. Note: Review (c), (c).

Fay Servicing Confirmed Borrower's Legal Ownership of the Assurant November 16, 2022 JOHN BAILEY FUNDS in Fay's Account to hire a contractor to remodel his home, or reduce the mortgage amount to and pay off the Mortgage Amount Due prior to the Civil Court's March 23, 2023 Mortgage Foreclosure Ruling.

H. CONCILIATION CONFERENCE

February 22, 2023 Conciliation Conference was a Verbal Conference with no written documents. John Bailey offered \$350,000 Cash to Settle the Mortgage Amount based on the home's documented \$163,000 Required Repairs presented to Plaintiffs Legal Counsel prior to the Conference. Conference Ruling, No Opinion.

Prior to the Conference the Plaintiffs Legal Counsel and Fay Servicing Denied John Bailey, Borrower,

his legal right to know about the Fay Servicing November 24, 2022 \$179,007.76 JOHN BAILEY Account Escrow Funds allowed to be used to reduce the mortgage amount prior to the Conference. Case Information Denied Borrower: \$179,007.76 + \$350,000 = a \$529,007.76 Cash Offer Amount to Satisfy the Mortgage Amount Due and Payable, and Settle the Mortgage Foreclosure Case. App.18a.

I. Civil Court Judgment for Foreclosure Mortgage Note Reinstated

On March 23, 2023 Court's Ruling Stated: 18. The Court finds the Plaintiff has re-established the terms of the lost note and its right to enforce the instrument as required by Section 673.3091, Florida Statute. 19. The Mortgage Note is hereby Re-established Pursuant to section 673.3091. Legal Fact: Prior to the HEARING, the Plaintiff failed to Comply with Florida Statute 673.3091 and prove the terms, case facts, and Florida Law that re-established the lost note for the Plaintiff as a Non-holder of the Note in accordance with Section 673.3091 (2), Florida Statute.

J. JUNE 16, 2023 COURT HEARING

The June 16, 2023 Court HEARING was based on the John Bailey, Defendant, Amended Emergency Request To Extend the June 1, 2023 Sale Date, and allow the DCA Clerk Of Court told him the DCA'S April 24, 2023 Notice Of Appeal had Standing over Plaintiffs June 1, 2023 Certificate of Sale, Doc. #157.

Prior to and during the June 16, 2023 HEARING, John Bailey stated the material case facts to the Court which established the legal basis for the Court to DISMISS the case. During the HEARING the Judge stated he had No Knowledge of Assurant's Addendum

A CLAIM INFORMATION document which he previously received from the Clerk of Court. Appellant's Case Doc.No.165, 135, and 142.

John Bailey informed the Court of Fay's failure to comply with Assurant's CLAIM INFORMATION document that required all payees, Fay Servicing and John Bailey, to sign the Assurant \$179,007.76 JOHN BAILEY FUND Check prior to Fay depositing the check into their account without John Bailey's Knowledge. App.18a.

K. FINAL CIVIL COURT RULINGS

During the June 16, 2024 Civil Court telephone HEARING with No Court Reporter, the Court asked Plaintiffs legal counsel, Tyler E, Mesmer, "What did you do with the Funds?" Counsel replied, "Your Honor we used the Funds in accordance with the Mortgage to repair the home." The Court stated: "CASE CLOSED."

John Bailey was denied the right (due process) to ask counsel, What Mortgage Item 5. Insurance Policy established the Mortgage Owner's legal right to use the Fay JOHN BAILEY escrow funds to repair the home for their corporate gain? Answer: Mortgage Insurance Policy Item 5. failed to allow the mortgage owner the right to use the JOHN BAILEY Escrow Funds. Case Fact: John Bailey, Borrower, was denied the right to ask Plaintiffs legal counsel questions.

The DCA had Full Knowledge of the Assurant Insurance CLAIM INFORMATION document terms and conditions which the Plaintiff and Loan Servicer violated on behalf of their client. The Court's PER CURIAM, Affirmed Ruling failed to state the legal basis for their ruling which required John Bailey,

Borrower, to present the case facts to the United States Of America Supreme Court for review.

REASONS FOR GRANTING THE PETITION

I. ISSUES OF NATIONAL IMPORTANCE

1. Fay Servicing allowed the Plaintiff, Servicer, and Mortgage Owner to violate Florida Statute 812.014, Theft. (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently: (a) Deprive the other person of a right to the property or a benefit from the property. (b) Appropriate the property to his or her own use or to the use of any person not entitled to use the property. *See above p.4.*

2. The Material Case Facts establish the Plaintiff and Servicer violations of Federal Law based on their Goal to allow their client, LSF9 Master Participation Trust to use the JOHN BAILEY \$179,007.76 Free Funds to remodel the home and sell the home for a price higher than their mortgage amount. App.13a-14a.

3. The Plaintiff and Fay Servicing actions Denied the Borrower his legal right to use the Assurant JOHN BAILEY Funds to reduce the mortgage amount in accordance with Mortgage Item 5. Policy Insurance, and use his additional funds to Satisfy the Mortgage Debt and Mortgage Foreclosure Case. App.13a.

4. When a Loan Servicer receives an Insurance Company's Claim Information and check for \$179,007.76

to be deposited into their account for the JOHN BAILEY account personal use on November 24, 2022, and fail to provide the Borrower with the information until March 22, 2023, one day prior to the Court's Foreclosure Ruling, is a violation of RESPA.

5. When an insurance company Claim Information document is sent to a Plaintiff and Loan Servicer which states: "Your mortgage lender is included as a payee on this check. All payees must endorse prior to depositing," and the Servicer deposits the Funds into their corporate account without Borrower's notice and required signature, established a violation Assurant's Claim Information terms and conditions, and Laws of Federal Fraud, and Bank Fraud-18 U.S. Code Section 1344 Federal Law. *See above at p.3.*

6. When Plaintiff, U.S. BANK, N.A., Trustee, allowed their client to use the Fay Servicing John Bailey escrow funds without Borrower's approval and signature on his check, to repair the home with no building permit, established a violation of Federal Law. App.16a-17a.

7. When a Court chooses to ignore Material Case Facts, Florida and Federal Law, prior to rendering a verdict, they could be considered to have violated the principle of "applying the law to the facts" which is a fundamental tenant of the legal system, potentially constituting judicial misconduct depending the severity and circumstances; this can also be seen as a violation of due process, as parties are entitled to have their case decided based on the relevant laws and evidence provided.

8. When a Florida DCA renders a Per Curiam, Affirmed verdict with no written opinion, the party is

prohibited from presenting their case to the Florida Supreme Court based on *Jenkins v. PSB*.

9. A U.S. Supreme Court Ruling on this would establish a legal Case Basis for Civil Courts and Appeal Courts to render their decisions based on the principle of applying Material Case Facts, State and Federal Laws, as the basis for their document preparation and Court Final Rulings for their appropriate legal cases, an issue of National Importance.



CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

John P. Bailey
Petitioner Pro Se
6331 9th Avenue South
Gulfport, FL 33707
(727) 439-0299
johnbaileylawgroup@gmail.com

January 10, 2025

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**OPINION,
DISTRICT COURT OF APPEAL OF FLORIDA,
SECOND DISTRICT
(JUNE 5, 2024)**

**DISTRICT COURT OF APPEAL OF
FLORIDA SECOND DISTRICT**

JOHN P. BAILEY,

Appellant,

v.

**U.S. BANK TRUST, N.A., as Trustee for LSF9
Master Participation Trust UNKNOWN SPOUSE
OF JOHN P. BAILEY; UNKNOWN TENANT 1; and
UNKNOWN TENANT 2,**

Appellees.

No. 2D2023-0856

**Appeal from the Circuit Court for Pinellas County,
Thomas Ramsberger, Judge.**

**Before: CASANUEVA, SILBERMAN,
and BLACK, Judges.**

PER CURIAM.

Affirmed.

**CASANUEVA, SILBERMAN, AND BLACK, JJ.,
Concur**

**ORDER DENYING MOTION FOR
CLARIFICATION, DISTRICT COURT OF
APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT
(AUGUST 13, 2024)**

**DISTRICT COURT OF APPEAL OF THE STATE
OF FLORIDA SECOND DISTRICT**

JOHN P. BAILEY,

Appellant,

v.

U.S. BANK TRUST, N.A.,

Appellee(s).

Case No. 2D2023-0856

L.T. No. 13-11402-CI

BY ORDER OF THE COURT:

Appellant's motion for clarification is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original.

/s/ Mary Elizabeth Kuenzel
Clerk
2D2023-0856 8/13/2024

COURT SEAL
District Court of Appeal
State of Florida

MEP

Served:

JOHN P. BAILEY
PINELLAS CLERK
MATTHEW A. CICCO
JULIA Y. POLETTI
MICHAEL ALLAN STEWART
ZACHARY Y. ULLMAN

**FINAL ORDER,
PINELLAS COUNTY CIRCUIT COURT
(JULY 12, 2023)**

**IN THE CIRCUIT COURT OF THE SIXTH
JUDICIAL CIRCUIT IN AND FOR PINELLAS
COUNTY, FLORIDA**

**U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9
MASTER PARTICIPATION TRUST,**

Plaintiff,

v.

JOHN P. BAILEY; ET AL.,

Defendant(s).

Case No.: 13-011402-CI

Before: Hon. Thomas RAMSBERGER, Judge.

**ORDER ON DEFENDANT'S AMENDED MOTION TO
DENY THE JUNE 1, 2013 (SIC) CERTIFICATE OF SALE
AND TRANSFER PROPERTY OF THE HOME OWNERSHIP
ON JUNE 13, 2013 (SIC) TO U.S. BANK TRUST, N.A.,
TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST,
DOCUMENT No. 157, CASE No. 13-011402-CI, TO
ALLOW THE SECOND DISTRICT COURT OF APPEALS
TO RULEON (SIC) DEFENDANTS NOTICE OF APPEAL,
CASE No. 2D 23-0856, TO DISMISS PLAINTIFF'S
FINAL MOTION FOR SUMMARY JUDGMENT,
DOCUMENT No. 121, CASE No. 13-011402-CI AND
APPELLANT'S (SIC) NOTICE OF APPEAL**

THIS CAUSE having come before the Court on June 16, 2023, beginning at approximately 11:30 a.m. and ending at approximately 11:47 a.m., with Julia Poletti, Esq. and Tyler Mesmer, Esq., both appearing as co-counsel for Plaintiff and John P. Bailey appearing as Defendant, pro se, and the Court having heard arguments from Plaintiff's counsel and Defendant without a court reporter present and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED as follows:

1. Defendant John P. Bailey filed three (3) motions which were heard and addressed:
 - (i) Amended Motion to Deny the June 1, 2013 (sic) Certificate of Sale and Transfer Property of the Home Ownership on June 13, 2013 (sic) to U.S. Bank Trust, N.A., Trustee for LSF9 Master Participation Trust, Document No. 157, Case No. 13-011402-CI, to Allow the Second District Court of Appeals to Ruleon (sic) Defendants Notice of Appeal, Case No. 2D 23-0856, to Dismiss Plaintiffs Final Motion For Summary Judgment, Document No. 121, Case No. 13-011402-CI and Appellant's (sic) Notice of Appeal, which was filed on June 16, 2023 and appears on the docket that day as Doc # 171;
 - (ii) Amended Motion to Deny the June 1, 2023 Certificate of Sale and Trasfer (sic) of Property (sic) Ownership on June 13, 2023, to U.S. Bank Trust, N.A., Trustee for LSF9 Master Particiaption (sic) Trust, Document No. 157, Case No. 13-011402-

CI, to allow the Second District Court of Appeals to Rule on Defendant's Notice of Appeal, Case No. 2D 23-0856, to Dismiss Plaintiffs Final Motion for Summary Judgment, Document No. 94, Case No. 13-011402- CI, which was filed on June 9, 2023 and appears on the docket on June 13, 2023 as Doc # 165; and

- (iii) Motion to Deny the June 1, 2023 Certificate of Sale and Trasfer (sic) of Property (sic) Ownership on June 13, 2023, to U.S. Bank Trust, N.A., Trustee for LSF9 Master Particiaption (sic) Trust, Document No. 157, Case No. 13-011402-CI, to Allow the Second District Court of Appeals to Rule on Defendant's Notice of Appeal, Case No. 2D 23-0856, to Dismiss Plaintiffs Final Motion for Summary Judgment, Document No. 94, Case No. 13-011402- CI filed on June 9, 2023 and appearing on the docket that day as Doc # 164.
- 2. The Defendant's three (3) motions ((i)-(iii)) are hereby DENIED.
- 3. The Defendant's motion titled Plaintiff's (sic) Emergency Request for the Court to Extend the Court's June 1, 2023 Sale Date to Allow the Second District Court of Appeals to Rule on D23-0856, filed on May 30, 2023 and appearing on the docket on May 31, 2023 as Doc # 155 and Defendant's Amended Emergency Request for the Court to Extend the Court's June 1, 2023 Sale Date to Allow the Second District Court of Appeals to Rule on

D23-0856, filed on May 31, 2023 and appearing on the docket that day as Doc # 156 are rendered MOOT.

4. There are no outstanding motions for the Court to address.

DONE AND ORDERED in Clearwater, PINELLAS County, Florida on this 12 day of July 2023.

/s/ Thomas Ramsberger
Judge

Copies Furnished to:

Julia Poletti, Esq.
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JOHN P. BAILEY
7012 Greenbrier Drive
Seminole, FL 33777
Email: johnbaileygroup@gmail.com

UNKNOWN SPOUSE OF JOHN P. BAILEY
7012 Greenbrier Drive

Seminole, FL 33777

UNKNOWN TENANT 1
7012 Greenbrier Drive
Seminole, FL 33777

UNKNOWN TENANT 2
7012 Greenbrier Drive
Seminole, FL 33777

**CERTIFICATE OF TITLE
MEMORIALIZING EXECUTION OF SALE,
PINELLAS COUNTY CLERK
(JUNE 26, 2023)**

**CIRCUIT/COUNTY COURT PINELLAS COUNTY,
FLORIDA CIVIL DIVISION**

US BANK TRUST NA,

Plaintiff,

v.

**STATE OF FLORIDA; BAILEY, JOHN P;
UNKNOWN TENANT 2; ANY AND ALL
UNKNOWN PARTIES ETC; UNKNOWN TENANT
1; UNKNOWN SPOUSE OF JOHN P BAILEY,**

Defendant.

UCN: 522013CA011402XXCICI

REF: 339775679

Doc Stamps Assessed \$3,564.40

PAID

CERTIFICATE OF TITLE

The undersigned Clerk of the Circuit Court certifies that he executed and filed a Certificate of Sale in this action on June 01, 2023, for the property described

herein and that no objections to the sale have been filed within the time allowed for filing objections.

The following property in Pinellas County, Florida:

LOT 189, SEMINOLE LAKE GOLF AND
COUNTRY CLUB ESTATES LAKESIDE
ANNEX, AS RECORDED IN PLAT BOOK
64, PAGES 47 AND 48, PUBLIC RECORDS
OF PINELLAS COUNTY, FLORIDA.

Property Address: 7012 GREENBRIER
DRIVE, SEMINOLE, FLORIDA 33777.

was sold to: U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST whose address is

c/o Fay Servicing LLC 425 S. Financial Place,
Suite 2000

Chicago, IL 60605

WITNESS my hand and the seal of this court on June 26, 2023.

/s/ Ken Burke

Ken Burke, CPA
Clerk of the Circuit Court &
Comptroller
[SEAL]

REGULATION X. REAL ESTATE SETTLEMENT PROCEDURES ACT

The act also prohibits specific practices, such as kickbacks, and places limitations upon the use of escrow accounts. The Department of Housing and Urban Development (HUD) originally promulgated Regulation X, which implements RESPA. (Page One, Paragraph One).

It also requires disclosures for mortgage escrow accounts at closing and annually thereafter, itemizing the charges to be paid the borrower and what is paid out of the account by the servicer. (Page One, Paragraph 2).

Objectives -12 CFR 1024.38 (b). Page 2. Servicers are required to maintain policies and procedures that are reasonably designed to achieve the following objectives.

2. Accessing and providing timely and accurate information. The servicer policies and Procedures must be reasonably designated to ensure that the servicer can:

- a. Provide accurate and timely disclosures to the borrower.
- b. Investigate, respond to, and make corrections in response to borrowers' complaints. These policies and procedures must be reasonably designed to ensure that the servicer can promptly obtain information from service providers to facilitate investigation and correction of errors resulting from actions of service providers.

- c. Provide a borrower with accurate and timely information and documents in response to the borrower's request for information with respect to the borrower's mortgage loan.

INSURANCE CLAIM INFORMATION (NOVEMBER 16, 2022)

American Security Insurance Company
PO Box 202142
Florence, SC 29520

ASSURANT

FAY SERVICING LLC
PO BOX 6501
ATTN: LOSS DRAFTS
SPRINGFIELD, OH 45501-6501

CLAIM INFORMATION

Insured: FAY SERVICING LLC

Claim Number 00103529594

Additional Name: John Bailey

Policy Number: 2MRO74191501

Cause of Loss: Fire

Date of Loss: 03-21-2022

Loan Number: 0000277644

Reported Date: 03-22-2022:

Property Address: 7012 GREENBRIER DR
SEMINOLE, FL 33777-450

Dear Fay Servicing, LLC.

We have completed our review of your claim. The following payment has been issued and mailed separately. A copy of the adjuster's estimate is included for your review.

LPR-Dwelling, Residential-fire:	Dwelling
Repair/Replacement Cost:	\$161,507.76
Deductible:	\$2,500.00
Recoverable Depreciation:	\$0.00
Non-recoverable Depreciation:	\$0.00
Previous Payments:	\$179,007.76
Date Issued:	11/16/2022
Payment Made Payable to:	Fay SERVICES LLC
For the account of	John Bailey
Payment Mailed to:	FAY SERVICES, LLC, PO BOX 6501 ATTN: LOSS DRAFTS SPRINGFIELD, OH 45501-6501

Your mortgage lender is included as a payee on this check. All payees must endorse prior to depositing. Please contact your lender directly for instructions on obtaining their endorsement.

Please give your repairer a copy of the enclosed estimate before repairs begin. If the repairer believes there are additional damages or costs attributed to this loss, please contact us to discuss the differences. Before we can consider any additional payment, we must agree the damage is related to this loss.

If you have questions about your claim, or you have additional information that you would like us to consider, please contact us at the number below. Our office hours are 8 a.m. to 6 p.m. Monday through Friday. We appreciate your business and thank you for being a valued customer.

Sincerely,

Steyn Funk
Claims Examiner
FL License Number: 3138793
Global P&C Claims
T. 800-652-1262 Ext. 4018813
F. 866-728-7098
E. myclaiminfo@assurant.com

Enclosure: Incoming
cc: Fay Servicing, LLC

**MORTGAGE, RELEVANT EXCERPT
(NOVEMBER 7, 2022)**

LOAN # 6331587755

MORTGAGE

[Page 1]

DEFINITIONS

(A) "Security Instrument" means this document, which is dated FEBRUARY 22, 2007

(B) "Borrower" is JOHN P. BAILEY

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION organized and existing under the laws of THE UNITED STATES OF AMERICA

[Page 6-7]

5. Property Insurance.

[. . .]

If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

Case Fact. The John Bailey Insurance Funds were required to lessen the amount due on the Security

Instrument in accordance with the Fay Servicing
November 7, 2022 Mortgage Statement

FAY SERVICING MORTGAGE STATEMENT (NOVEMBER 7, 2022)

FAY SERVICING MORTGAGE STATEMENT

**JOHN BAILEY
6331 9TH AVENUE SOUTH
Gulfport, FL 33707.**

As of 11/07/2022, the Accelerated Amount Due is \$543,690.80. This amount will pay off the entire balance of your loan. We will accept a lesser amount to reinstate the loan.

Material Fact:

11/16/2022 \$543,690.80

(-)179,007.76 John Bailey Escrow

Funds

= \$364,683.04 Balance Due To Satisfy

Mortgage Amount

Civil Case Issue D: \$ - 0 - Balance due and payable

Case Fact: The \$179,007.76 Fay Servicing John Bailey Escrow Funds were disclosed to John Bailey on March 22, 2023, one half day prior to the March 23, 2023 Court Hearing for Mortgage Foreclosure.

Rule 9.330(B)

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SUPREME COURT
PRESS