

No. _____

**In the
Supreme Court of the United States**

JASON BRIAN VICKS AND MEKEISHA VICKS,

Petitioners,

v.

OCWEN LOAN SERVICING, LLC; JOHN DOE 1-5

Respondents.

**On Petition For Writ Of Certiorari To The
United States Court Of Appeals For The Fourth
Circuit**

PETITION FOR WRIT OF CERTIORARI

JASON BRIAN VICKS &

MAKEISHA VICKS,

Pro Se Petitioners

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QUESTIONS PRESENTED FOR REVIEW

1. Whether borrowers have the right under the Due Process Clause of the Fourteenth Amendment to contest residential foreclosures pursued by loan servicers that create unauthorized mortgage loan accounts after the lender has zeroed out the debt and informed a State Commissioner of Bank in response to a complaint that they will no longer pursue the foreclosure action.

2. Whether the NC Supreme Court *in Re: Foreclosure of Lucks* is binding on the courts in its finding that the Rules of Civil Procedure do not apply to power of sale, or non-judicial foreclosures proceedings including the initial proceeding and the proceeding before the Superior or district court, thus res judicata and collateral estoppel do not apply.

**PARTIES TO THE PROCEEDING AND RULE
29.6 STATEMENT**

The parties to the proceeding in the Fourth Circuit Court of Appeals of, whose judgment is sought to be reviewed, are: • Jason Brian Vicks and Mekeisha Vicks, plaintiffs, appellants below, and petitioners here. Ocwen Loan Servicing, LLC, plaintiffs, appellees below, and respondents here.

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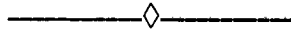
Opinion of Fourth Circuit (decided November 27, 2017).....	App. 1
Order of Fourth Circuit (filed January 2, 2018).....	App. 4
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TABLE OF AUTHORITIES

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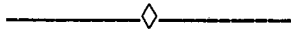
PETITION FOR WRIT OF CERTIORARI

Petitioners Jason Brian Vicks and Mekeisha Vicks respectfully prays that a writ of certiorari issue to review the judgment below.



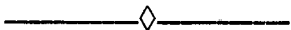
OPINION BELOW

The opinion of the Fourth Circuit appears at appendix A to this petition. The courts opinion is unpublished at *Vicks v. Ocwen Loan Servicing, LLC*, 676 Fed. Appx. 167 (4th Cir. Jan 25, 2017) (per curiam).



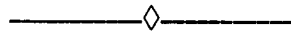
JURISDICTION

The judgment of the court of appeals was entered on December 11, 2017. A copy is attached at Appendix A. A petition for rehearing was denied on January 2, 2018 (App., *infra*, 4b). A copy of the judgment is attached at appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).



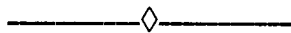
CONSTITUTIONAL PROVISIONS

US CONSTITUTION Amend. XIV, sec. 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.



STATUTORY PROVISIONS AND RULES INVOLVED

Relevant provisions of Fair Debt Collection Practices Act, 15 U.S.C. 1692-1692p; and the Federal Rules of Civil Procedure and NCGS 45-21.16.



STATEMENT OF THE CASE

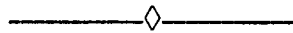
Petitioners challenged the right for Ocwen to collect mortgage payments and to continue with the sale of the property based on a foreclosure order that was entered in by the Union County Clerk of Court in June 2011 due to the lenders response to a NC Commissioner of Bank Complaint, wherein the lender and previous servicer informed the Commissioner that they would not continue with the foreclosure based on the defective assignment, and based on the fact that information was received by the Petitioners that the loan balanced had been zeroed out and satisfied by the lender.

Petitioners maintain that Respondents did not have a contract that it was authorized to collect on or a right to pursue a foreclosure on, and the Respondents attempts to collect the alleged debt and sale the property was a violation of FDCPA laws. Petitioners also believe that the Fourth Circuit Court of Appeals did not uphold the NC Supreme Court's Decision *in Re: The Foreclosure of Lucks*, but instead ruled that the claims made stood as a collateral attack of the Clerk's order permitting the foreclosure to proceed. Although, Petitioners stand on grounds that the clerk's order was void for want of subject matter jurisdiction because of the fact that the promissory note was made payable to Option One Mortgage Corporation and was never endorsed to Wells Fargo, NA, the Petitioner's did not

make any attempt to attack the clerk's void order in its complaint as the complaint was not against the same parties and was not regarding the same subject matter loan as the one that was decided on by the clerk.

Petitioner's complaints that the respondent falsified loan information were somehow misconstrued as being a collateral attack on the clerk's order and remain unaddressed. The Respondent was successful at deceiving the court to believe that it was pursuing the old foreclosure dated in 2011 when in fact the respondent had created an entirely new loan making false claims for monies owed on a loan account that it was not authorized to create.

Petitioner believes that the issues raised are sufficient for at least 4 justices to vote to grant certiorari. This Court has never ruled on whether the rules of civil procedure apply to non-judicial foreclosures in North Carolina.



REASONS FOR GRANTING THE PETITON

A. The holding of the court below that the claims are barred by collateral estoppel conflicts with the North Carolina Supreme Court's ruling *In re Lucks*, 794 S.E.2d 501 (N.C. 2016).

B. Importance of the Question Presented

(I) This Court should visit the issue due to the fact that it has the potential to affect thousands of homeowners. The non-judicial foreclosure is a laid back proceeding where things can be overlooked and when mistakes are made, homeowners should be allowed to bring challenges as found in the North Carolina Supreme Court in *re Lucks*, 794 S.E.2d 501 (N.C. 2016). Therefore, given the magnitude of the issue involved, this Court should grant review. Additionally, the failure of Ocwen to allow the Petitioner's to obtain a satisfaction of their note after the account was zeroed out by the lender is a violation of FDCPA. Although the Fourth Circuit found that claiming that the account was zeroed out in 2013 somehow negates the claims made by the petitioner, they failed to state how the claims were negated.

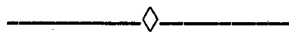
(II) The Fair Debt Collection Practices Act (FDCPA) prohibits debt collectors from engaging in unfair, deceptive, or misleading debt-collection practices. In this case, the Respondent violated the act by creating an unauthorized note and pretending to collect on a debt that was zeroed out by the lender is a bona-fide claim due to the fact that the respondent

later sold the property that was the subject of the complaint.

(III) Without the opportunity to judicially challenge lenders for their actions in the lax non-judicial proceedings on bona-fide claims as in this case that on their face appear to be separate and distinct from the non-judicial foreclosure and even on those claims related to the non-judicial foreclosure violates the Petitioners 14th Amendment Rights.

(IV) Although the 4th Circuit found that the Petitioners lodged a collateral attack on a final state court judgment Petitioners did not allege fraud, or contest the state court judgment but the petitioners holds that no contract existed between the foreclosing lender and the Petitioner at the time in which the clerk entered its order permitting the foreclosure. NCGS 45-21.16 only permits holders of the note and deed of trust to foreclose, the note was payable to Option One Mortgage and not Wells Fargo or the respondent in this matter. For that reason, the petitioners maintain that the clerks order was unenforceable. The clerk's order to foreclose was not voidable, but void. The defendant pretended to be continuing the foreclosure for the holder, but the bona-fide holder of the unendorsed note is Option One Mortgage Corporation, a defunct entity. It is clear from the unendorsed

promissory note who that the defendant does not have a legal enforceable interest in the matter absent fraud. Petitioners believe that this is one of the primary reasons why the North Carolina Supreme Court ruled that res judicata and collateral estoppel do not apply to non-judicial foreclosures, because the rules are too lax.

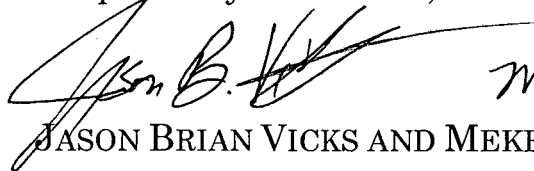


CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be granted.

This, the 30th day of March, 2018.

Respectfully submitted,



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