

No: _____

IN THE
SUPREME COURT OF THE UNITED STATES

Frances Endencia - Petitioner

vs

Wells Fargo as trustee for Banc of America certificate holders 2007-5,

First American Title Insurance co,

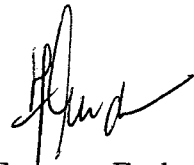
Dupage county Sheriff John zaruba

Dustin Mayes at Goodwill Realty

Mario & Leticia Arce -

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
ILLINOIS SUPREME COURT



Frances Endencia

Petitioner in Pro Sec

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QUESTION PRESENTED

In 2012, Honorable Judge Gibson approved a foreclosure order of 235 S Hale St Addison IL 60101. Due to fraud, Wells Fargo (& Banc of America) did not go in front of Judge Gibson to enter an eviction order against Dr Endencia. Instead, on December 14-16, 2015, Sheriff Zaruba forcibly forced her out, stole all her personal belongings, food, clothing, memorabilia, veterinary business records and veterinary equipment and rare coin collection which included a metallic penny.

In 2016, Dr Endencia filed a lawsuit and defendants responded with Res Judicata & Collateral Estoppel. The 2016 MR 584 case is an exception to res judicata because of the addition of parties and the issues and the demand for resolution is not the same from the original case of 10 CH 882. She is asking this court for a rehearing and to enter the judgment after making a decision on a civil rights violation case she is bringing up to this court. This would also give her time to improve her income. She just opened a new business, which requires her attention and time.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption on the cover page.

- (1) Wells Fargo Bank as Trustee for Banc of America Certificate Holders 2007-5

% SLS 8742 Lucent Blvd, Suite 300

Highlands Ranch, CO 80129-2386

- (2) First American Title Insurance Apple Title Division

1 Kinderkamack Road Hackensack NJ 07601

201.621.6201 pmaccarrone@firstam.com

- (3) Leticia Arce 1500 N Goldengate Drive Addison IL 60101

Mario Arce 235 S Hale St Addison IL 60101 630.624.9894

Lawyer of Mario & Leticia Arce - James M Pauletto jim@paulettolaw.com 220 E North

Ave NorthLake IL 60164 708.531.0101

- (4) Sheriff John Zaruba of DuPage County IL 630.407.6000

501 N Countyfarm Road Wheaton IL 60187 sheriff@dupagesheriff.org

- (5) Dustin Mayes, Goodwill Realty Group dustin@callzteam.com

17W220 22nd Street Ste 250B, Oakbrook Terrace, IL, 60181 (630) 530-9800

TABLE OF CONTENTS

Question Presented.....	i
Parties to the Proceedings.....	ii
Table of Contents.....	iii
Index to Appendices.....	iii
Opinions Below.....	1
Jurisdiction.....	1
Constitutional & Statutory Provisions Involved.....	1
Statement of the Case.....	1
Conclusion	12

INDEX TO APPENDICES

Order of IL Supreme Court Nov 22, 2017.....	A
Order of IL Appellate Court, 2nd District June 27, 2017.....	B
Sheriff's Deed of no sale.....	C
Trial Court Order Oct 19, 2016.....	D
Roberto Chaidez Heritage Title Insurance.....	E
Excerpts of Chaidez Mortgage 2/7/2005.....	F

Excerpts Dr Endencia Mortgage 5/16/2007.....	G
First American Title Insurance Closing Statement.....	H
No record of payments made to investors of Countrywide Home Loans.....	I
Calculation of Capitalization Rate.....	J
2007 Assessor's Value.....	K
Email from Veron May 6, 2015 providing title policy.....	L
First American Title Insurance copy (Endencia not insured).....	M
SEC Pooling & Servicing Agreements for Banc of America.....	N
<u>https://www.sec.gov/Archives/edgar/data/1411865/000105640408000941/ baf07008_35-5.txt</u>	
<u>https://www.sec.gov/Archives/edgar/data/1427687/000095013608000884/file1.htm</u>	
Foreclosure Order by Hon Judge Gibson Aug 13,2012.....	O
Eviction Notice by Sheriff John Zaruba 15 LM 208	P
Addison Police Report during eviction Dec 14-16, 2015.....	Q
IL Real Estate Transfer Declaration to Mario & Leticia Arce.....	R

PETITION FOR WRIT OF CERTIORARI

Frances Endencia, petitioner in pro sec, respectfully petitions for a Writ of Certiorari to review the judgment below.

OPINIONS BELOW

The opinion of the Illinois Appellate Court, appears at the Appendix C. 2017 IL 2d 160926 -U. No 2-16-0926, Summary Order filed June 27, 2017.

JURISDICTION

The date on which the highest state court decided my case was November 22, 2017. A copy of that decision appears in Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

TABLE OF AUTHORITIES CITED

<u>Beakman v. Marsters, 195 Mass. 205, 80 N.E. 817</u>	8
<u>Blackwood v. City of Hanceville, 936 So.2d 495, 507 (Ala.2006)</u>	12
<u>Burguiere v Pollingue 843 So 2d 1049 2002 -1385 (La 2/25/03)</u>	
<u>Butler Jr vs Paciera 559 So 2d 36, Mar 1990</u>	9
<u>BE Welch vs Crown Zellerbach Corp 359 So 2d 154</u>	9.
<u>Center Ridge Ganley Inc v Stinn 8th Dist No 51074, 1986 WL 7928</u>	8
<u>Faison v Lewis 2015 NY Slip Op 04026</u>	7
<u>Giambrone v. Douglas, 874 So.2d 1046, 1052 (Ala.2003)</u>	11
<u>Glaser v. Meyers (1982)137 Cal. App. 3d 771</u>	10

<u>Hackmann v Dawley (1995), 105 Ohio App 3d 363, 368, 663 NE 1342</u>	8
<u>Lumley v Gye, 2 El & B1 216</u>	8
<u>Meadowmoor Diaries v Drivers' Union,</u>	
<u>371 Ill 377, 21 NE 2d 308(1939), aff'd, 312 US 287 (1941)</u>	8
<u>Nationstar Mortgage, L.L.C. v. William Weedo</u>	
<u>F-11563-15. Mar 3, 2017</u>	7
<u>Park v. Acierno, 826 N.E.2d 324</u>	8
<u>People of State of Illinois vs Safeguard Properties LLC 2013 CH 201715</u>	10
<u>Suttles and City of Homewood v. Eldetraud "Trudy" ROY 1071453</u>	11
<u>State v. Corhen 700 S.E.2d 912 (2010),</u>	7
<u>Suttles v. Scrivani 07-1062</u>	10
<u>Suttles and City of Homewood v. Eldetraud "Trudy" ROY 1071453</u>	11
<u>USA vs Titus 15-3054</u>	7
<u>Walker v Cronin 107 Mass 555</u>	8
<u>Ex parte Wood, 852 So.2d 705, 709 (Ala.2002).</u>	11
Statutes:	
815 ILCS 5/3 (j).....	7
The Title Insurance Act 215 ILCS 155 § 3 (6)	5
735 ILCS 5/15 - 1703 (a) (3) § (2) (i,ii, iii, iv,v,vi) (3)	
735 ILCS 5/15-1504 § L.....	7

The Federal Rule of Civil Procedures Rule 60 (b) (2) & (3).....	6.
LSA - RS 13: 4232 § 4232 A (1) & (3).....	9

STATEMENT OF THE CASE

Defendant, Wells Fargo claimed Res Judicata & Collateral Estoppel as defense for this case in trial court, 16 MR 584. Dr Endencia filed a motion to add defendants: First American Title Insurance, Goodwill Realty, Dustin Mayes, DuPage County Sheriff John Zaruba and Leticial & Mario Arce. Additional issues needs to be addressed since the foreclosure order of Judge Gibson in 2012. These motions were denied at circuit court.

Dr Frances Endencia purchased 235 S Hale St Addison IL 60601 from Roberto Chaidez on May 16, 2007. She paid First American Title Insurance \$1230 for title insurance that did not exist. Her legal representative, Michael Freeman & First American Title Insurance failed to disclose the fact and failed to provide her with the title insurance on May 16, 2007. Closing occurred at the office of First American Title Insurance.

Dr Endencia lost her veterinary licence in August 2008 due to civil rights violations of IDFPR (currently on appeal) This caused her failure to make mortgage payments that lead to foreclosure. A foreclosure Order with conditions for the fulfillment of eviction requiring a title be provided to the

buyer was given by Hon Judge Gibson 10 CH 882 in 2012. At the time a foreclosure order was given she was not aware of the fraud committed by First American Title Insurance and Banc of America. On April 6, 2015, three years after the foreclosure, Dr Endencia received her copy from First

American Title Insurance. It was then that she discovered there was no title for the property due to securitization defects created by Banc of America, Wells Fargo, MERS and Countrywide Home Loans. (**Bank of America Home Loans** is the mortgage unit of Bank of America. In 2008, Bank of America purchased the failing **Countrywide Financial** for \$4.1 billion. In 2006, Countrywide financed 20% of all mortgages in the United States, at a value of about 3.5% of United States GDP, a proportion greater than any other single mortgage lender.)

On December 14-16, 2015 Sheriff John Zaruba did an eviction with no court orders, taking most of all her possessions, including her coin collection which had a metal nickel. (worth \$100,000). In 2016, someone went into her bank safe at First Midwest Bank when the bank was closed and took 2 paintings and a coin collection and first Midwest Bank Checks.

Dr Endencia filed suit against Wells Fargo since there was no court order of eviction, causing her to lose all her personal belongings such as food, clothes, business records, veterinary business equipment, her coin collection

(that included a steel coin worth \$100,000). Approximate cost would be about \$300,000. It is the defendant's duty, Wells Fargo, to summon her to court and have the judge give an order of eviction. It is the duty of the Sheriff John Zaruba to provide her with proper court documents prior to eviction. Wells Fargo responded stating res judicata. Trial court dismissed the case and Dr Endencia appealed.

ARGUMENT

Standard of Review

Common Law Record and Issues of Law

This case has the elements of exception to res judicata & collateral estoppel.

- A. The addition of parties - in pursuant to 735 ILCS 5-2 / 405 (a) as a result of pre emptive misconduct of various persons to mislead.

First American Title, Dustin Mayes of Goodwill

Realty, Sheriff John Zaruba, Mario & Leticia Arce

- B. Issues are not the same -

New discovery of fraud since foreclosure order of Judge Gibson in 2012. The Federal Rule of Civil Procedures Rule 60 (b) (2) & (3). The Title Insurance Act 215 ILCS 155 § 3 (6) states "Financial interest is any ownership interest, legal or beneficial, except ownership of publicly traded

stock. When Countrywide Home Loans / MERS & Banc of America securitized the note of the mortgage, 235 S Hale St Addison IL 60101, they acquired ownership interest, making the real estate transaction between Chaidez and Dr Endencia, null and void. First American Title Insurance knew this and failed to disclose it to Dr Endencia at that time. To induce a sale, participants of the transaction committed fraud.

Roberto Chaidez Jr purchased 235 S Hale St Addison IL 60101, Permanent Index No 03 - 28 - 315 - 006 on February 7, 2005. He took a loan from Countrywide Home Loans for 308,000. Countrywide separated the note from the mortgage and the mortgage valued at \$308,000 was "securitized" and sold to numerous investors of MERS (Mortgage Electronic Registration System Inc).

On May 16, 2007, Frances Endencia purchased the property from Roberto Chaidez and paid \$72,000 cash down payment (in addition to other closing costs). Banc of America acquired the mortgage WITHOUT PAYING THE INVESTORS OF MERS. Banc of America created a note for Frances Endencia of \$312,000. By December of 2007, the mortgage was securitized

for its loan value, with Wells Fargo as Trustee for certificate holders series 2007-5.

Dr Endencia paid \$1230 for title insurance # OP-- 16199719. at closing. First American Title Insurance failed to deliver the policy in timely manner and failed to inform her there was no title due to securitization of MERS / Countrywide Home Loans, Banc of America & Wells Fargo. Representing attorneys, including Dr Endencia's counsel, Michael Freeman hid the information from her until April 2015, 8 years after sale, 3 years after foreclosure order given by Judge Gibson, seven years after closing. Since Banc of America, Countrywide Home Loans & First American Title participated and induced fraud, the transaction is void ab initio. In State v. Corhen 700 S.E.2d 912 (2010). USA vs Titus 15-3054 and Nationstar Mortgage, L.L.C. v. William Weedo, F-11563-15. Mar 3, 2017 defendants were indicted for mortgage fraud In Faison v Lewis 2015 NY Slip Op 04026 Decided on May 12, 2015, a forged deed is void ab initio, meaning a legal nullity at its inception.

2. 815 ILCS 5/3 (j) Securitization is illegal in Illinois

3. .735 ILCS 5/15-1504 § L Complaint of Foreclosure did not follow proper format. The foreclosure order of Hon Judge Gibson dated Aug 13, 2012 (Appendix M) did not comply with § (L) requirement of listing the names of other persons who are joined as defendants and whose interest in or lien on the mortgaged real estate is sought to be terminated.

Tortious Interference of Dustin Mayes of Goodwill Realty. A few years prior to the eviction on December 14-16, 2015, Dustin Mayes provided preemptive services to Wells Fargo by contacting her tenants and instructing them not to pay the rent, her insurer, Country Companies, the insurance for the building, DuPage County Recorder, the real estate taxes and Village of Addison for the water bill. He created tortious interference with the business relationships of Dr Endencia.

In tortious interference cases by defendant/s such as Center Ridge Ganley Inc v Stinn 8th Dist No 51074.1986 WL 7928. Hackmann v Dawley (1995), 105 Ohio App 3d 363, 368, 663 NE 1342 Park v. Acierno, 826 N.E.2d 324 (p12 Walker v Cronin 107 Mass 555

Meadowmoor Diaries v Drivers' Union, 371 Ill 377, 21 NE 2d 308(1939), aff'd, 312 US 287 (1941).Beakman v. Marsters,195 Mass. 205, 80 N.E. 817 (p13) Lumley v Gye, 2 El & B1 216 defendants were held liable to the damages sustained by the plaintiff in consequence.

In order for exceptions of res judicata to be maintained, the subsequent action must (1) NOT be between same parties (2) NOT be based on same cause of action (3) the demand has to be different.. The presence of these is fatal to a plea of res judicata.

The addition of parties after the foreclosure order in 2012 is due to discovery of the First American Title insurance fraud in 2015 and preemptive behavior of Dustin Mayes, realtor of Wells Fargo.

In Butler Jr vs Paciera 559 So 2d 36, Mar 1990 the insurance company was added later was not res judicata. In BE Welch vs Crown Zellerbach Corp 359 So 2d 154, is another exception to res judicata defense.

The LSA - RS 13: 4232 § 4232, it states that exceptions to the general rule of res judicata by:

A. A judgment does not bar another action by the plaintiff

(1) When the exceptional circumstances justify relief from res judicata effect of judgment.

(3) When the judgment reserved the right of the plaintiff to bring another action.

The Federal Rule of Civil Procedures Rule 60 (b)

(2) newly discovered evidence that with reasonable diligence could not have been discovered in time to move for a new trial, under Rule 59 (b).

(3) fraud, misrepresentation or misconduct of opposing party.

In Burguières v Pollingue 843 So 2d 1049 2002 -1385 (La 2/25/03), in both common law and civil law, in order for a second

suit to be barred by the doctrine of res judicata the parties must appear in the same capabilities in both suits.

Wrongful Eviction.

- (a) Breach of Order of Judge Gibson dated Aug 13, 2012 (p 78)
- (b) 735 ILCS 5/15 -1703 § (a) (2) (i) & 735 ILCS 5/15 - 1703 § 5 Sheriff of DuPage County wrongfully evicted Endencia from 235 S Hale St Addison IL 60101 when he did not have a court order for the eviction. Petitioner was not named party in eviction 15 LM 208

He and his group, realtor Dustin Mayes of Goodwill Realty has failed to return the personal belongings of Endencia, worth \$300,000, took possession of financial information of retirement funds, savings bonds and other important personal documents, leading to losses. In Suttles v. Scrivani 07-1062, the court awarded the tenant \$110,000 for emotional distress and \$750,000 for "malicious destruction of property", a total of \$860,000 for wrongful eviction without a court order to tenant Suttles.

(<http://chattanooga.com/2008/7/9/131164/Jury-Awards-860000-To-Tenants-In.aspx>) In People of State of Illinois vs Safeguard Properties LLC 2013 CH 201715, State Attorney has filed against Safeguard Properties for illegal evictions, unlawful entries and intimidation. Glaser v. Meyers (1982)137 Cal. App. 3d 771, a judgment award of

\$10,000 for the plaintiff for defendant's action in retaliatory eviction.

Is Sheriff John Zaruba immune from civil lawsuits? A question of determination is State-agent immunity under a question of law or a question of fact. As in SUTTLES and City of Homewood v. Eldetraud "Trudy" ROY 1071453. Prior decisions of this Court state that " "[t]he applicability of the doctrine of discretionary function [now called State-agent immunity] must be determined on a case-by-case basis, and it is a question of law to be decided by the trial court." 'In determining whether immunity under Cranman applies, this Court has established a "burden-shifting" process:

"In order to claim State-agent immunity, a State agent bears the burden of demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity. Giambrone v. Douglas, 874 So.2d 1046, 1052 (Ala.2003); Ex parte Wood, 852 So.2d 705, 709 (Ala.2002). If the State agent makes such a showing, the burden then shifts to the plaintiff to show that the State agent acted willfully, maliciously, fraudulently, in bad faith, or beyond his or her authority. Giambrone, 874 So.2d at 1052; Wood, 852 So.2d at 709; Ex parte Davis, 721 So.2d 685, 689 (Ala.1998). 'A State agent acts beyond authority and is therefore not immune when he or she "fail[s]

to discharge duties pursuant 708 (Ala.2002); Blackwood v. City of Hanceville, 936 So.2d 495, 507 (Ala.2006)

TRANSFER OF TITLE. The property has no deed / title since February 7, 2005. After the eviction, the property was transferred to Mario & Leticia Arce, with no record of payment at the DuPage County Recorder's Office.

CONCLUSION

This case is an exception to Res Judicata. The circuit court barred Endencia from adding new parties to the suit and new issues of fraud by First American Insurance Title Company, pre-emptive tortious interference of Goodwill Realty, Dustin Mayes causing her to lose insurance coverage, the misconduct of Sheriff John Zaruba of not providing Endencia with proper court order of eviction so she can prepare the move and place her belongings in a storage unit. The sale of Leticia & Mario Arce without evidence of payment, when Endencia when a dispute of the property is ongoing.

Dr Endencia is asking this court to Grant her Writ of Certiorari rehearing and, in consideration to her current income, to provide judgment after hearing the case of Endencia vs ADT Security, IDFPR, et al. 7th District Court of the Northern Illinois, **Appeal No: 17-2256**

Petitioner is also asking an order from the court for the following:

1. New trial.
2. Foreclosure proceeding be dismissed.
3. First American Title provide Endencia with a clear title.
4. First American Title pay past & current real estate taxes for 235 S Hale St Addison IL 60101 PIN# 03 28 315 006, under Frances Endencia's name
5. A court order of eviction to Leticia & Mario Arce and unknown occupants occupying 235 S Hale St Addison IL 60101.
6. An order requiring Sheriff John Zaruba and unknown holders of Endencia's property to return her personal & business belongings, plundering her retirement fund, taking bank safe key and stealing 3 original paintings and coin collection using the color of the law and pay her the sum of \$110,000 for emotional distress and \$750,000 for malicious destruction of property.



Frances Endencia