No. 23 –

IN THE

Supreme Court of the United States

JAMES GIEHL,

Petitioner,

v.

BANK OF AMERICA,

Respondent.

On Petition for Writ of Certiorari

to the Florida Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This "one in a million" case is a result of the Florida Courts at every level refusing to correct numerous violations of civil rights, laws, rules, and doctrine once the matters were brought to their attention. The questions presented are:

1) Do Florida Judges have the ability to depart from a person's 4th Amendment Rights and violate the "color of law" (18 U.S.C. Sec. 242) code to avoid correcting known void decisions within a civil case.

2) Can known misconduct performed by the Florida State Courts be allowed to erode the public trust placed within the courts, the Florida foreclosure process, and establish illegal case law without the important check and balances provided by the U.S. Supreme Court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner James Giehl respectfully requests the issuance of a writ of certiorari to review a lower Florida court case which was denied review by the Florida Supreme Court.

DECISION BELOW

The decision of the Florida Supreme Court was issued (via an order) dated January 04, 2023, which stated (in summary): "the Florida Supreme Court will not review the case without a written Copinion from the lower Second District Appeals Court." The Florida Supreme Court refused to review the original opinion of the lower Sarasota Circuit Court because the opinion was not drafted by the Second District Appeals Court, even though the Appeals Court "affirmed" the lower Circuit Courts exact written opinion - with no comments.

JURISDICTION

The Florida Supreme Court entered judgment on January 04, 2023. The 90 day rule requirement mandated that this U.S. Supreme Court new case request be filed with the Honorable U.S. Supreme Court Clerk by March 04, 2023. This submission was mailed (via postmarked U.S. Mail) on March 04, 2023 to the Honorable Clerk of the U.S. Supreme Court.

A letter from the Honorable Clerk of the U.S. Supreme Court (dated March 08, 2023) was received requesting some corrections to the case submission. On May 03, 2023, the corrected new case submission was mailed to the Honorable U.S. Supreme Court for review. Unfortunately, a second letter from the

Honorable Clerk (dated May 15, 2023) requested a few additional corrections. This newly corrected submission was mailed to the Honorable Clerk of the U.S. Supreme Court on or about July 07, 2023.

FEDERAL RULES INVOLVED

1) United States Constitution, Amendment IV:

> *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

2) Title 18 U.S. Code § 242 – "Deprivation of Rights Under Color of Law":

> *"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens..."*

3) Title 11 U.S. Code § 547:

> *Preferences (a) In this section-*
> *(1) "inventory" means personal property leased*

or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;...

4) Title 11 U.S. Code § 544:

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by...

STATEMENT OF THE CASE

Case Background

This case is associated with one piece of real property located in Sarasota, Florida which was foreclosed upon via judicial foreclosure three times: 1) In 2012 by Bank of America, 2) In 2014 by the Sienna Condo Association, and 3) In 2015 by Bank of America all within the same Circuit Court located in Sarasota Florida.

In 2012, Bank of America filed and started real property foreclosure actions against a person named Jason Allen Young for failure to pay his mortgage payments as required by his signed note and mortgage documents. This case was later dismissed by the Sarasota Circuit Court via a court order.

In 2014, a foreclosure case was filed and successfully won by the "first in time, first in right" superior lien holder (Sienna Condo Association) on the real property. As a direct result, an unrelated 3rd party bona fide purchaser for value named James Giehl purchased the real property directly from the Sarasota Government (clerk) and was issued a clear, properly recorded, and uncontested title to the real property.

In 2015, (approximately 8 months after the property was sold and titled to James Giehl) Bank of America started foreclosure actions (a second time) against Jason Allen Young and the real property which was now owned by James Giehl. At the time the 2015 foreclosure action was filed, the complaint clearly listed that Bank of America knew James

Giehl was the actual owner of the real property – but they knowingly choose to not notify him of the foreclosure actions. James Giehl was officially noticed of the foreclosure action(s) 1,196 days after the 2015 foreclosure case was initiated.

In addition, at the start of the 2015 foreclosure action, the debt holder Jason Allen Young submitted for and was awarded a federal bankruptcy declaration. This declaration listed the debt which was directly associated with the subject property as unsecured debt (approximately $95,000), and therefore the trustee fully removed the debt.

Later in 2019, even though Bank of America knew the debt was unsecured and cancelled, they continued with the foreclosure action against James Giehl's real property. Next, the Sarasota Circuit Court Judge wrongfully ruled in favor of Bank of America and ordered the sale of James Giehl's protected real property. James Giehl's real property was then forcibly taken away by the court and sold/titled to Bank of America.

A "1.540 Motion for Relief" was then timely filed in less than 1 year from the original final order, which outlined numerous violations that fully void the original case. Next, (approximately 1 year after that motion) James Giehl filed an "Updated 1.540 Motion for Relief" which enhanced and better explained the original motion for relief; the "updated" version contained 213 pages of fully proven and undisputed law, rule, doctrine, and case law violations – all of which made the original 2019 final order (and any judgments within the original case) indisputably void.

In December 2021, a hearing was conducted relating to both of James Giehl's 1.540 Motion(s) and a few other key filings which were made prior to the hearing; disappointingly, prior to the hearing, a private meeting between the judge and Plaintiff's attorney took place to discuss the case without James Giehl present (as described and filed within the case by James Giehl in January 2022).

In January 2022, the Sarasota Circuit Judge denied both of James Giehl's 1.540 Motion(s) for Relief which were reviewed during the December 2021 hearing. Next, James Giehl filed a motion for reconsideration which focused on the numerous proven Florida Law and Florida Rule violations which were untouched and fully ignored by the Circuit Judge. This motion was immediately denied.

On February 09, 2022, an appeal case was then opened (filed) based on the numerous violations of: law, rules, case law, and well established doctrine that were purposefully ignored by the Circuit Judge. Then on November 09, 2022, the morning after the Florida state judicial elections ended, an order was filed by the Second District Appeals Court stating: "Per Curiam, Affirmed". The order provided absolutely no opinions and/or rulings on the numerous (28+) violations (proven within the case) as a matter of well defined laws, rules, case law, and doctrine. Each of the proven violations were purposefully ignored by the Sarasota Circuit Court - and then knowingly overlooked by the Second District Appeals Court.

On November 23, 2022, a "Motion for Reconsideration" was filed with the Second District

Appeals Court; this motion clearly and plainly stated again the numerous violations of laws, rules, case law, and doctrine contained within the original case. This motion made it crystal clear that the original Sarasota Circuit Court judge: 1) was informed of the 28+ violations multiple times, 2) was told the mandatory law and rule violations in a clear and plain language, and 3) the judge knowingly choose to ignore the violations.

The reconsideration motion also made it clear that the original judge exceeded her authority by going against all of the established and mandated laws and rules listed; and that Title 18, U.S.C., Section 242 – "color of the law" was violated. The motion for reconsideration was later denied by the Florida appeals court.

On December 09, 2022, a Florida Supreme Court case was then opened (filed) based on the numerous violations of: law, rules, case law, and well established doctrine that were purposefully ignored by both lower courts. On January 04, 2023, the Florida Supreme Court issued an order stating they would not review the case because the appellate court did not issue a written opinion; the Florida Supreme Court refused to utilize the lower Circuit Court opinion which was the exact opinion used by the Appeals Court to make their "affirmed" decision.

Case Facts

I. The "First in Time, First in Right" is a well established legal precedent which dates back to 1827 and U.S. Supreme Court Justice John Marshall. This concept has been used to

create laws, and is used as the continued basis for rulings throughout the U.S. and within the U.S. Supreme Court. The Sarasota Circuit Court purposefully overlooked this fact and in doing so created an environment of distrust in the judicial system and Florida foreclosure process.

On 06/26/2006, Sienna Condominium Association officially filed and recorded a Declaration of Condominium which was recorded as Sarasota Clerk's Instrument No. 2006116369. WITHIN this detailed recorded document, it clearly stated: *"The Association has a lien on each Condominium Parcel to secure the payment of Assessments. The lien is effective from and shall relate back to the recording of this Declaration."* There was no mortgage, note, or encumbrance attached to the property at that point in time when the lien was placed; as such, the condo association lien was given full and perfected priority by the clerk's lower recorded document instrument number and no lien priority evaluation among other liens was needed or required. As such, the Sienna Condo Association's contractual duties were "vested" and "perfected" on the date of the declaration's recording within the Sarasota Clerk's records.

On 10/05/2006, Bank of America recorded Jason Young's mortgage (related to the property) via Instrument No. 2006177755. This recording by Bank of America was over 3+ months AFTER the Declaration of Condominium (prior ongoing lien) was filed by Sienna. Bank of America was fully aware of the prior perfected and priority property lien; this lien was listed within Bank of America's

own "Declaration of Condominium" (mortgage packet filed) recorded just prior to their mortgage back in 2006. As such, Bank of America knowingly and willingly accepted Young's mortgage fully knowing that a prior, superior, and perfected lien already existed on the real property before their mortgage existed.

This topic has been previously ruled upon numerous times and is well settled by the Florida laws (and case law) as listed above. The "First in Time, First in Right" requirement is supported by the following Florida Statues:

Florida Statue 695.11 – "Instruments Deemed to be Recorded from Time of Filing", clearly states:

> *"The sequence of such official numbers shall determine the priority of recordation. An instrument bearing the lower number in the then-current series of numbers shall have priority over any instrument bearing a higher number in the same series."*

Florida Statue 713.07(3) "Priority of Liens" states:

> *"All such liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time such lien attached as provided herein, but any conveyance, encumbrance or demand recorded prior to the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens."*

The Florida Statues listed above indicate a very clear and well established absolute law – the lower number SHALL have priority over ANY

higher number instrument. This fact was not optional for any Florida judge to rule upon.

U.S. Supreme Court On This Subject:

This concept dates back to January 23, 1827 when Chief Justice of the United States John Marshall delivered the opinion of the United States Supreme Court in: *Rankin & Schatzell v. Scott, 25 U. S. (12 Wheat. 177) 111, 6 L. Ed. 592.* In that opinion, the court, speaking through Chief Justice Marshall, stated:

> *"The principle is believed to be universal, that a prior lien gives a prior claim, which is entitled to prior satisfaction, out of the subject it binds, unless the lien be intrinsically defective, or be displaced by some act of the party holding it, which shall postpone him, in a court of law or equity, to a subsequent claimant."*

Florida Supreme Court Case Law On This Subject:

In case, *Bessemer v. Gersten 381 So. 2d 1344 (1980)*, the Florida Supreme Court held:

> *"We hold further that the creation of the lien by acceptance of the deed relates back to the time of the filing of the declaration of restrictions. Thus, with regard to the time of attachment of the lien, this case is to be treated as if the respondents had taken title subject to a valid pre-existing lien."*

In *Holly Lake Ass'n v. FEDERAL NAT. MORTG., 660 So. 2d 266 (1995)*, the Florida Supreme Court stated:

"In Bessemer, the language in the declaration of restrictions put all parties on notice that an ongoing, automatic lien had been created at the time that the property was purchased, and that this lien would continue each month until the owner paid the monthly assessment fee."

Florida District Court of Appeals On This Subject:

In *ASSOCIATION OF POINCIANA VILLAGES v. AVATAR PROPERTIES, INC., et al., 97-2619. No., (1998)*, the Fifth District Court of Appeal of Florida stated:

"The property in this case was already burdened with the assessment lien possibility prior to the purchase money mortgage being obtained and it, if Avatar's position were correct, did not emanate from the mortgagor. The Florida Supreme Court's discussion in Holly Lake concerning priority of intervening mortgages after the filing of a declaration such as the one in this case, would have been superfluous."

In *NEW YORK LIFE INSURANCE and ANNUITY CORPORATION, v. Hammocks COMMUNITY ASSOCIATION, INC., 622 So.2d 1369 (1993)*, the Third District Court of Appeal of Florida stated:

"First, the 1984 amendment to Declaration of Covenants for the Hammocks, in which the subject real property is situated, gives an assessment lien to the Association for all unpaid fees assessed by the Association for maintaining and administering the common properties and improvements in the

development, which lien is prior to a subsequently given first mortgage...".

The honorable court also stated: *"We conclude that, as a matter of law, the Association's assessment lien, which was foreclosed below, is prior to New York Life's first mortgage lien...*

Other Well Established Case Law On This Subject:

"First in Time, First in Right", See: Walter E. Heller & Co. Southeast, Inc. v. Williams, 450 So. 2d 521, 532 (Fla. 3d DCA 1984), review denied, 462 So. 2d 1108 (Fla. 1985); Bessemer v. Gersten, 381 So. 2d 1334 (Fla. 1980); Homann v. Huber, 38 Wn.2d 190, 198, 228 P.2d 466 (1951); Hollenbeck v. City of Seattle, 136 Wn. 508, 514, 240 P. 916 (1925)); Seattle Mortg. Co., Inc. v. Unknown Heirs of Gray, 133 Wn.App. 479, 495, 136 P.3d 776 (2006).

II. 18, U.S.C., Section 242 – "Color of the Law" requires each honorable court to enforce laws, rules, case law, and doctrine; each of the uncontestable violations within the case were knowingly and willingly ignored by the Florida State Courts.

As clearly stated within Florida Rules of Civil Procedure 1.540(b)(4), a void judgment and/or order can be attacked at any time, with no time limits and/or restrictions. The 1.540 Motions for Relief filed by James Giehl identified over 28+ violations of laws, rules, and doctrine. In addition, James Giehl identified 75+ prior rulings (case law) which should have been followed by each of the courts - especially

the case law which was a binding precedent on the EXACT circumstances of this case – which was already set by the Florida Supreme Court and Florida Appeals Courts.

Listed below is only a partial list of all the 28+ proven law and rule violations which were contained within just one of James Giehl's 1.540 Motion's; each of these uncontested violations were fully detailed, proven, and completely ignored by each of the Florida judges:

Florida Statues:

a) 702.036 "Finality of Mortgage Foreclosure Judgment"

b) 672.403 "Power to Transfer; Good Faith Purchase..."

c) 726.109 "Defenses, Liability, and Protection of Transferee"

d) 163.405 "Title of Purchaser"

e) 712.04 "Interests Extinguished by Marketable Record Title"

f) 818.05 "Sale, Concealment, or Disposal of Property..."

g) 695.11 "Instruments Deemed to be Recorded From Time of Filing"

h) 713.07 "Priority of Liens"

i) 718.116 "Assessments; Liability; Lien and Priority; Interest;..."

j) 672.312 "Warranty of Title and Against Infringement;..."

k) 672.315 "Implied Warranty; Fitness for Particular Purpose"

l) 672.403(1) "A purchaser of goods acquires all title..."

m) 673.3011 "Person Entitled to Enforce Instrument"

Florida Rules of Civil Procedure

a) 1.070 "Summons; Issuance"

b) Form 1.944 "Mortgage Foreclosure"

Florida Rules of Judicial Administration

a) Rule 2.516 "Service of Pleadings and Documents"

b) Rule 2.505 "Attorneys"

c) Rule 2.515 "Signature and Certificates of Attorneys..."

d) Rule 2.520 "Documents"

United States Constitution

a) 4th Amendment

United States Code

a) 11 U.S. Code § 547

b) 11 U.S. Code § 544

c) 18 U.S. Code § 242

Doctrine

a) Res Judicata

b) 120 Day Rule

d) Bona Fide Purchaser Protections

e) Shelter Principle Protections

Each of the law, rule, doctrine, and case law violations noted above were fully explained, proven, and presented to both honorable Florida courts (Circuit Court and District Appeal's Court) within the following filings:

1) The original 1.540 Motion for Relief

2) The "Updated" 1.540 Motion for Relief

3) The case outline specifically drafted for the Sarasota Circuit Court judge before the day before the December 2021 hearing

4) Verbally told to the Sarasota Circuit Court judge by James Giehl during the December 2021 hearing

5) The Circuit Court Motion for Reconsideration

6) The Second District Court of Appeals Initial Brief

7) The Second District Court of Appeals Motion for Reconsideration

8) The Florida Supreme Court Brief

As such, it is physically impossible that the Sarasota Circuit Court judge and each of the Second District Court of Appeals judges did not know all of the mandatory law violations which were done by the plaintiff; it is also impossible that each of them did not know each of the rule, doctrine, and case law violations which were broken by the plaintiff just to win the case. In addition, each judge knew that any violation of law, rule, doctrine, and binding

precedent would require them to void all of the original case order(s).

Federal Bankruptcy Case

Next in the list of violations by the Plaintiff - just after the 2015 foreclosure case was started by Bank of America, Jason Allen Young applied for and was granted a Federal Bankruptcy Judgment. Under 11 U.S. Code § 547, all creditors were required list any and all unsecured and secured debt connected to Jason Allen Young, including Bank of America. Jason Allen Young was granted a discharge on September 09, 2015 *(United States Bankruptcy Court, Middle District of Florida, Case #8:16-ap-00215-MGW).* This federal case fully removed the personal liability of all Young's debts; this included the $0 amount of "secured debt" and $0 amount of "unsecured debt" knowingly listed (by Bank of America's attorney) as owed to Bank of America by Jason Allen Young.

Bank of America was properly noticed within Young's bankruptcy case; Bank of America was represented by at least (1) attorney who filed motions/reply(s) within the federal bankruptcy case. There was no "secured debt" tied to Bank of America listed anywhere within Jason Young's bankruptcy case records; a full disclosure of every debt (secure and unsecure) was mandatory from Jason Allen Young and also from each of his properly served creditors. As such, bankruptcy creditor (Bank of America) had "notice or actual knowledge of the case", as stated within *11 U.S. Code § 523(3)(a).*

United State Code (USC), Title 11, §547 requires all lenders to provide factual evidence of a "perfected title" and a "perfected lien". This enforcement action by each Trustee is outlined within *United State Code (USC), Title 11, §544(a)*. Numerous prior decisions support this federally mandated requirement to show a "perfected title" and/or a "perfected lien" or a lien will become avoided.

In ***In re Millivision, Inc. (Ostrander v. Gardner)*** *2007 U.S. App. LEXIS 873 (1st Cir. January 16, 2007),* the trustee within the Millivision case (noted above) is not going to go out looking for all of the debts associated with the main party; since all of the creditors were properly noticed within the case (just like Young's case), it was up to each of the creditors to properly list and prove any and all debts in the case before the final order (secure and unsecure). Any unknown and/or unlisted debts after a final order is signed become avoided.

Next, in ***In re Lazarus (Collins v. Greater Atlantic Mortgage Corporation)*** *2007 U.S. App. LEXIS 388 (1st Cir. January 9, 2007),* the result was the same as the Millivision case, both of the lenders had their liens avoided and their claims rendered unsecured because the lenders failed to perfect their liens.

Furthermore, on June 30, 2017, an Affidavit of Indebtedness Transaction Detail Log was filed by the Plaintiff which clearly showed a "New Loan" was established for $66,231.77 on 01/08/2016. This new "unsecured" loan showed the exact same principle balance which was owed in both of Bank of America's 2012 and 2015 foreclosure case

documents. This new loan was also established right after the judgment within Jason Young's federal bankruptcy case; the bankruptcy declaration order was signed on 09/09/2015, which removed all of Bank of America's ties to James Giehl's real property. In addition, no security instrument could be located anywhere within the 2015 foreclosure case and/or anywhere within the Sarasota Clerk's records as directly tied to this new loan.

III. Numerous Florida laws protect bona fide purchasers for value of Real Property, yet Florida Courts knowingly choose to provide those protections and issue unmarketable and fraudulent property titles

Based on the Sarasota Circuit Court's actions within the 2015 foreclosure case, it was concluded that James Giehl was not afforded any of the statutory protections mandated by the following statues when he purchased the subject real property in 2014 from the Sarasota Clerk:

1) 672.403 "Power to Transfer; Good Faith Purchase of Goods; "Entrusting"
2) 726.109 "Defenses, Liability, and Protection of Transferee"
3) 163.405 "Title of Purchaser"
4) 712.04 "Interests Extinguished by Marketable Record Title"
5) 672.312 "Warranty of Title and Against Infringement; Buyer's Obligation..."
6) 672.315 "Implied Warranty; Fitness for

Particular Purpose"

7) 672.403(1) "A purchaser of goods acquires all title..."

8) 702.036 "Finality of Mortgage Foreclosure Judgment"

The 2014 foreclosure case was where the *"first in time, first in right"* superior lien holder foreclosed on the real property, and where the judge's final order mandated the removal of all prior ties to the property. Since James Giehl purchased the property from the Sarasota government and was an innocent 3rd party, bona fide purchaser for value, he was protected by numerous mandatory protections. In addition, James Giehl was also fully vested and protected by numerous Florida Statues - which included Florida Statue 702.036.

Furthermore, it was proven within the 2015 foreclosure case (by the Sarasota Circuit Court Judge's actions) that James Giehl's issued and recorded real property title from 2014 was not protected and not marketable as mandated by the Florida Statues listed above. Since James Giehl is somewhat sure the Circuit Court did not only target James Giehl's title as void, this creates a systemic problem for every clerk throughout the state of Florida. As per the numerous Florida Statues which fully protect bona fide purchasers of real property, the numerous Florida Clerks are mandated to issue a valid and fully marketable title after a court ordered foreclosure sale. As such, there are only (2) legal outcomes once a Florida Clerk issues a title after a judicial foreclosure sale – they are as follows:

FIRST OPTION: The purchaser was defrauded (by

the clerk) of any money paid for the real property to the government (clerk). Next, a fraudulent, un-clear, and non-marketable property title was issued by the government. Then, the purchaser would be further defrauded of any time and/or investments (repairs) placed into the property after they acquired legal title.

SECOND OPTION: The title issued by every clerk throughout Florida in every foreclosure sale is a clear and fully marketable title – as required and mandated by Florida Statues. This would mean that any legal actions taken by creditors to try and affect the quality and/or character of the title, would be fully void.

Unfortunately, there are no other possible options that exist outside of the two options listed above. A real property title issued by any Florida government office will be either a clear and fully marketable real property title (in support of Florida Statues), or the title issued by the government office will be fraudulent and in violation of multiple Florida Statues. Disappointingly, the Florida courts have deemed (by their actions) within the 2015 foreclosure case that James Giehl's government issued title from 2014 was fraudulent and not fully marketable.

As such, if any Florida government (clerk) causes: 1) a foreclosure property to be listed for sale (on-line), 2) sells the property, and 3) issues a non-clear (fraud) and non-marketable title (in direct exchange for an innocent 3rd party person's cash) – the Florida Statues below will be violated by their actions:

1) 817.034 Florida Communications Fraud Act

2) 812.014 Theft

3) 839.13 Falsifying Records

4) 501.204 Unlawful Acts and Practices

5) 517.301 Fraudulent Transactions; Falsification or Concealment

In the end, the validity of any Florida clerk issued title after a court ordered foreclosure is a systemic Florida wide problem. If this case is allowed to stand and create case law, then the criminal violations listed above will continue unchecked by every Florida government and in every future foreclosure case. But, more importantly, thousands of innocent buyers of foreclosure properties throughout Florida will continue to be defrauded by the local governments (of their funds) and the governments will also be allowed to continue issuing worthless, non-marketable, and fraudulent real property titles.

REASONS FOR GRANTING THE WRIT

The Honorable Court Should Grant this Certiorari Request to Repair Public Trust Throughout the Florida Courts and to Re-Clarify Protections for all Bona Fide Purchasers for Value Which Have Been Long Forgotten by Florida Courts.

This Honorable Court should grant a review of this case to ensure the long standing legal precedent of "first in time, first in right" does not get

ignored by a rouge decision by one Florida Circuit Judge. This national standard has been vital to every court decision since the 1800's when U.S. Supreme Court Justice John Marshall wrote his opinion in *Raskin & Schatzell v. Scott*, 25 U.S. (12 Wheat. 177) 111, 6 L. Ed. 592 which stated: "The principle is believed to be universal, that a prior lien gives a prior claim, which is entitled to prior satisfaction...".

The Florida Supreme Court also applied this principle in its holdings in both *Bessemer v. Gersten* 381 So. 2d 1344 (1980) and in *Holly Lake Ass'n v. FEDERAL NAT. MORTG.*, 660 So. 2d 266 (1995). The court stated within the Bessemer case, "We further hold that the creation of a lien by acceptance of the deed relates back to the time of the filing of the declaration of restrictions. Thus, with regard to the time of the attachment of the lien, this case is to be treated as if the respondents had taken title subject to a valid pre-existing lien." Likewise, the Florida District Court of Appeals, with its holdings in *Association of Poinciana Villages v. Avatar Properties, Inc., et al.*, 97-2619. No., (1998) and *New York Life Insurance and Annuity Corporation, v. Hammocks Community Association, Inc.*, 622 So. 2d 1369 (1993). The court stated in New York Life, "We conclude that, as a matter of law, the Associations assessment lien, which was foreclosed below, is prior to New York Life's first mortgage lien."

This Court should grant certiorari to resolve a long standing national precedent set by this Honorable Court and by the Florida Supreme Court; an extremely clear precedent that both the Florida

Circuit Court and Florida Second District Court of Appeals failed to uphold. As a direct result, each of the Florida judges also knowingly violated two long standing and mandatory Florida Statues (695.11 and 713.07(3)) which direct each of the Florida Courts on how to handle factual lien priority in any case.

11 USC § 547

Next, the Florida Courts were presented with facts proving the violation of *United State Code (USC), Title 11, §547*; this statue requires all lenders to provide factual evidence of a "perfected title" and a "perfected lien" or their lien will become avoided during a federal bankruptcy case. This is exemplified in two federal cases *In re Millivision, Inc. (Ostrander v. Gardner) 2007 U.S. App. LEXIS 873 (1st Cir. January 16, 2007) and In re Lazarus (Collins v. Greater Atlantic Mortgage Corporation) 2007 U.S. App. LEXIS 388 (1st Cir. January 9, 2007)* where the lenders within these cases had their liens avoided and their claims rendered unsecured because the lenders failed to immediately perfect their liens.

At no time within Bank of America's 2015 foreclosure case, nor during Jason Allen Young's Federal Bankruptcy Case, was a "perfected title" and/or "perfected lien" shown or proven by Bank of America. In fact, neither the secured debt (mortgage) associated to only Jason Allen Young or the real property (subject of this case), were listed anywhere within Young's federal bankruptcy case files. As such, Bank of America's 2015 foreclosure

actions against James Giehl's real property became fully illegal and known fraudulent actions just so they could gain title.

Furthermore, just after Young's 2015 bankruptcy order, Bank of America's subsequent 2015 foreclosure case filings clearly show a new loan was established which was then associated to the real property. This new loan (the new basis for the 2015 foreclosure action) showed the exact principle amount due to Bank of America as stated within the initial complaint which started the 2015 foreclosure case. This new loan had no "secured debt" tied to the loan, which means the new loan had no legal ties to James Giehl's protected real property.

This court should grant this certiorari request to correct the oversight and/or lack of knowledge of Federal Bankruptcy Rules and the adverse consequences such actions have on all future cases. Bank of America also needs to be held accountable for their illegal foreclosure and known fraudulent actions. They purposefully continued the foreclosure case against James Giehl, who had absolutely no knowledge of bankruptcy actions or cases at that time.

Bona Fide Purchaser For Value

The next topic is the long standing principle and protections afforded to every "bona fide purchaser for value"; this well established doctrine was presented and proven within James Giehl 2015 foreclosure case filings. James Giehl showed that he: 1) acquired legal title in 2014, 2) provided a substantial amount of money to the Sarasota government during the purchase, and 3) completed

an extensive amount of "due diligence" prior to bidding on the real property (as described within the Updated 1.540 Motion filed within the case).

The idea that property sales conducted by any government entity are in fact performed by a "trusted seller", and therefore need no further examination - dates back to at least 1913 when the Washington Supreme Court, in: (*State v. Hewitt Land Co., 74 Wash. 573, 586, 134 P. 474 (1913)*) stated:

> *"A purchaser of land sold by the state or patented by the government has a right to presume that all proceedings leading up to the sale are regular. He is not bound to look beyond the face of the deed, either to find out whether the department has strictly complied with the law or rightly decided some fact, nor is he bound to investigate the conduct of the patentee or grantee."*

Furthermore, the Illinois Supreme Court Case, *Steinbrecher v. Steinbrecher, 197 Ill. 2d 514, 523-24 (2001)*, established the elements for a court when considering whether a third party's acquisition of real property renders any further proceedings or appeal moot:

> *(1) the property passed pursuant to a final judgment,*
>
> *(2) the right, title, and interest of the property passed to an individual or entity who is not a party to the action, and*
>
> *(3) the appellant failed to perfect a stay of judgment within the time allowed for filing a*

notice of appeal.

These third party protections were, again, further evaluated in Deutsche Bank National Trust Co. v. Roman, *2019 IL App (1st) 171296.* In this case, the Appellate Court pointed out that the Illinois Supreme Court clearly set forth in *Steinbrecher* that when a third party acquires title pursuant to the judgment and sale, that third party was not *"one by or against whom a lawsuit is brought,"* nor did they have a stake or standing in the lawsuit. The court further noted in Roman the public policy regarding Rule 305(k): to safeguard the integrity and finality of judicial sales, and without a policy of finality and permanence, stating:

> *"no person would purchase real property involved in a judicial proceeding, if afterwards he incurred the hazard of losing the property due to facts unknown to him at the time of the sale."*

In addition, this long standing precedent also helped numerous law makers in Florida establish mandatory statues to protect bona fide purchasers for value; each of these statues were also stated and fully proven within the 2015 foreclosure case by James Giehl, but knowingly ignored by each of the lower Florida courts. The statues proven were as follows:

1) Florida Statue 702.036 states:

> *(a) "In any action or proceeding in which a party seeks to set aside, invalidate, or challenge the validity of a final judgment of foreclosure of a mortgage or to establish or*

reestablish a lien or encumbrance on the property in abrogation of the final judgment of foreclosure of a mortgage, the court shall treat such request solely as a claim for monetary damages and may not grant relief that adversely affects the quality or character of the title to the property..."

2) Florida Statue 672.403 states:

"A purchaser of goods acquires all title which her or his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value."

3) Florida Statue 672.312(1) states:

"Subject to subsection (2) there is in a contract for sale a warranty by the seller that: (a) The title conveyed shall be good, and its transfer rightful; and (b) The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge."

4) Florida Statue 726.109(1) states:

"A transfer or obligation is not voidable under s. 726.105(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee."

5) Florida Statue 163.405 states:

"Any instrument executed by any county, municipality, or community redevelopment agency and purporting to convey any right, title, or interest in any property under this part shall be conclusively presumed to have been executed in compliance with the provisions of this part insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned."

6) Florida Statue 672.315 states:

"Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

In addition, the Sarasota Government's (clerk) public foreclosure auctions, sales, and the resulting titles issued by the clerk - are forms of a quitclaim title and/or deed. As such, James Giehl acquired title to the real property (subject of this case) in 2014 as a quitclaim title from the government. This is covered under Florida Statue 695.01(2) which states:

"Grantees by quitclaim, heretofore or hereafter made, shall be deemed and held to be bona fide purchasers without notice within the meaning of the recording acts."

This court should grant this certiorari request to correct the known wrongful actions of the lower

Florida Courts. The actions of the Florida Courts not only go against numerous mandatory Florida Statues, but their actions also go against the decisions made by other higher courts on the same subject all throughout the United States. These long standing statues, doctrine, and numerous amounts of case law protect thousands and thousands of purchasers of property each year; this protection is vital to protect innocent 3rd party purchasers of property from the illegal and forceful removal of their legally titled property.

Shelter Principle

In addition to the Bona Fide purchaser for value protections in which James Giehl was fully protected under, James Giehl was also fully protected in the 2015 foreclosure action under the "shelter principle" which is a well established doctrine under Florida Statue 672.403.

This equitable principle states that a good faith purchaser of property acquires all of the rights that the transferor of that property. As such, the shelter rule provides James Giehl with a claim of interest that is superior to any and all alleged previous alleged secured creditors. The shelter principle protects James Giehl, who purchased real property from the Sarasota Government (clerk) in good faith and for value, during the ordinary course of a public auction sale. Further, it protects James Giehl even if Bank of America did allegedly have a security interest in the real property he obtained.

The shelter rule itself has several purposes. The first purpose is to allow a bona fide purchaser, who is entitled to hold and enjoy the property, to

have a congruent entitlement to sell that property. The second purpose is to prevent the use of the property from being held up in litigation. The main reasoning underlying the shelter principle is based on reasoning of negotiation and basic ownership. Every time a negotiable instrument transfers to a new possessor, that new possessor is always accorded at least the rights of the previous possessor, the transferor.

As such, James Giehl was entitled to (upon transfer of possession by title) all of the rights held by the Sarasota Government (Court/Clerk) based upon the sale within the 2014 foreclosure case. The court ordered the sale of the real property in 2014, and the clerk then carried out that judge's order by selling the property and issuing a clear, valid, marketable, recorded title in the name of James Giehl. As such, Bank of America had no right or standing to foreclose on James Giehl's protected real property within the 2015 foreclosure case.

Based on this principle, James Giehl was afforded the same exact rights of the seller; as such, Bank of America could not foreclose or enforce a lien against the Sarasota Circuit Court or the Sarasota Clerk of Court (who was the seller). The direct legal actions taken by both trusted government entities resulted in an equity sale which "transferred the possession" of the real property directly to James Giehl in 2014; as such, James Giehl has obtained the same rights and protections of the previous possessor of the property – the Sarasota Government.

The Shelter Rule is designed to guarantee a holder in due course a ready market for its

negotiable instrument, the court in *Finalco v Roosevelt (235 Cal.App.3d 1301, 1305-1306, 3 Cal.Rptr.2d 865, 867 [1991])* observing:

> *"Thus, when a transferee takes an instrument from a holder in due course the transferee takes free from all claims and defenses to the same extent as did the holder in due course even if the transferee is aware of those claims and defenses. If this was not the rule, a holder in due course could be deprived of a market for the instrument if the obligor widely disseminated notice of a claim or defense * * * [which would] harm the holder in due course by destroying the market for the instrument."*

See also, *4 Hawkland and Lawrence, UCC Series § 3-201:03; National Union Fire Ins. Co. v Woodhead, 917 F.2d 752, 758 [2d Cir 1990] ["The purpose behind this shelter principle is to protect the holder in due course 'so that he can sell what he has purchased'."]*). In addition, see *Michael R. Rozen v. North Carolina National Bank, 588 F.2d 83 (4th Cir. 1978).*

120 Day Rule

In addition to the violations noted above, Bank of America furthered their list of violations by not properly serving known defendant James Giehl within 120 days after the original complaint was filed within the "2015 case". It specifically states within **Florida Rule of Civil Procedure, Section 1.070(j)** Summons; Time Limit:

> *"If service of the initial process and initial pleading is not made upon a defendant within*

120 days after filing of the initial pleading directed to that defendant the court, on its own initiative after notice or on motion, shall direct that service be effected within a specified time or shall dismiss the action without prejudice..."

It was a fact that James Giehl was never officially noticed in the case until July 12, 2018 when Bank of America published a "Notice of Action" in a local newspaper. This was approximately 1,196 days AFTER the initial complaint was filed. This fact was fully presented and proven to the lower Florida Courts, but each court choose to knowingly and willingly ignore this fact.

The worst part, Bank of America fully knew that James Giehl owned the real property prior to the start of the 2015 foreclosure action. This was proven by the contents of their own verified complaint which started the case on 04/03/2015. They clearly stated in Section 19 of the complaint: *"...the Judgment recorded August 20, 2014, in Official Record Instrument Number 20144099654 of the Public Records of Sarasota, Florida".* This instrument number directly relates to the exact same Summary Final Judgment and date listed within the 2014 foreclosure case which removed any and all prior ties to the property and where James Giehl was clearly listed as the new titled owner of the real property (with a contact address).

Bank of America would have had to physically look within the 2014 foreclosure case records to get the instrument number listed above. They would have also seen the full name and

address for the new titled owner of the real property (James Giehl) in which they were attempting their foreclosure actions. This was willful and calculated misconduct by Bank of America; this was also willful misconduct by the Florida Courts to allow these actions to not be immediately corrected once it was brought to their attention.

Res Judicata

On 02/28/2012, a Verified Mortgage Foreclosure Complaint (filed by Bank of America) was recorded by the Sarasota Clerk of Court within the "2012 case". This was the 1st attempt by Bank of America to foreclose on the same real property which was also the subject property within the "2015 case". On 07/25/2012, the 2012 foreclosure case and Bank of America's foreclosure proceedings were dismissed by Honorable Judge Rapkin. Later, on 04/03/2015 (almost 3 years later) a 2nd Verified Complaint for Foreclosure of Mortgage (again filed by Bank of America) was recorded by the Sarasota Clerk of Court within the 2015 foreclosure case.

The case details within both of the 2012 foreclosure actions and the 2015 foreclosure actions were identical. As such, the subject real property listed within both cases was identical, the parties listed within both initial verified complaints were identical, and loss date and loss amount listed (as the basis for both cases) were also identical. As such, the 2015 foreclosure case (which was Bank of America's second Foreclosure attempt) was void based on them violating the well established doctrine of "Res Judicata".

In ***FNMA v Deschaine***, *2017 WL 3908184,*

Maine Supreme Court (Sept. 7, 2017), the principles of *res judicata* mean that the lender has forever lost the right to bring a foreclosure action after their first case was dismissed. In the case FNMA argued that the second case involved additional delinquent payments not included in the first case, but the Maine Supreme Court found that both cases were seeking to foreclose on the same exact fully accelerated obligation and that *res judicata* applies. FNMA also argued that the homeowners would receive a windfall of a "free house," but the court found to rule otherwise would be a windfall for the lender. As such, the court stated that the lender can not keep initiating foreclosure actions until it eventually prevailed in one of the cases.

This doctrine is also shown within: Bryan v. Fernald, *FL 2d, Case #2D15-4830, (2017)*, stated:

> *"[a] judgment on the merits rendered in a former suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action."*

See: Fla. Dep't of Transp. v. Juliano, *801 So. 2d 101, 105 (Fla. 2001) (quoting* Kimbrell v. Paige, *448 So. 2d 1009, 1012 (Fla. 1984))*. Thus, res judicata applies when the following four identities are present: *"(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality of the persons for or against whom the claim*

is made." Topps v. State, *865 So. 2d 1253, 1255 (Fla. 2004).* Three elements must be established to prevail on a motion seeking to invoke res judicata: *"(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action."* Duhaney v. Att'y Gen., *621 F.3d 340, 347 (3d Cir. 2010).* Res judicata *"bars not only claims that were brought in a previous action, but also claims that could have been brought."*

2014 Foreclosure Case Final Order

The 2014 foreclosure action took place when the Sienna Condo Association properly executed their priority and superior right to foreclose on the property owned by Jason Young. The association's superior lien foreclosure was properly recorded in the Sarasota Clerks Official Records prior to any mortgage being recorded. As a direct result of this case, the property was then legally sold to protected bona fide purchaser for value, James Giehl.

Throughout the 2015 foreclosure case, Bank of America operated with a knowing and willful disregard to the forever binding written final judgment of foreclosure within the 2014 foreclosure case. The Final Judgment of Foreclosure recorded on 08/20/2014 was worded explicitly (Page 4, Paragraph 12) to forever remove any and all right, title, interest, or claim to the property. The judge's final order was worded EXACTLY as follows:

> *"That upon confirmation of the sale, whether by the Clerk filing the Certificate of Sale, or by Order of the Court ruling upon objections to the sale, Defendant, and any and all persons*

claiming by, through or under said Defendant since the filing of the Lis Pendens herein, shall be forever barred and foreclosed of and from any and all right, title, interest, claim or demand of any kind or nature whatsoever, in and to the property hereinabove described, and the purchaser at the sale, his representatives or assigns, shall be entitled to immediate possession of said property."

The exact wording of the 2014 foreclosure case final order (noted above) was brought to the attention of the court and Bank of America by James Giehl on 09/22/2017. The final order within the 2014 foreclosure case (when the Sienna Condo Association foreclosed on their superior lien) was very clear; it stated that everyone "...shall be forever barred and foreclosed of and from any and all right, title, interest, claim or demand of any kind or nature whatsoever...".

This written final order was VERY clear; as such, absolutely no interpretations or assumptions to its meaning were needed or required. This written final order was signed, the final order was recorded, the final order had no objections, the final order was not appealed by any party, and the binding order was never invalidated by any court. As such, the 2014 foreclosure case final order is still a valid binding order to this day; this 2014 final order made any actions by Bank of America within the 2015 foreclosure case void.

Each of the numerous known and willful violations by the lower Florida courts and Bank of America prove that Bank of America's entire 2015 foreclosure action against James Giehl's protect real

property was illegal and void.

In the end, this is a VERY unique case – ***a one in a million case***. This case proves that numerous laws, rules, doctrine, and case law were knowingly and willingly overlooked by the Florida Courts. For the Florida state courts to not immediately, correctly, and properly rule on each of these mandatory laws and rule violations goes against the root foundation of why the judicial system was created in the first place - to uphold and enforce the laws of this great country.

CONCLUSION

James Giehl respectfully requests that this Honorable U.S. Supreme Court to issue a writ of certiorari.

Respectfully Submitted,

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