
BAYVIEW LOAN SERVICING LLC

Plaintiff-Respondent

V.

REZA FARZAN; MRS REZA FARZAN, FICTICIOUS SPOUSE OF REZA FARZAN; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., AS NOMINEE FOR AMERICAN MORTGAGE NETWORK, INC.

Defendant -Appellant

**SUPERIOR COURT OF NJ
APPELLATE DIVISION
APPELLATE #: A-000789-23**

CIVIL ACTION

ON APPEAL FROM

**SUPERIOR COURT OF NJ
CHANCERY DIVISION:
FORECLOSURE COURT**

Docket No. F-013470-16

HON. DAVID BAUMAN

SAT BELOW

**BRIEF FROM
DEFENDANT-APPELLANT REZA FARZAN**

February 27, 2024

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| THE TRIAL COURT ERRED BY DENYING MY REQUEST TO ATTEND THE ORDER TO SHOW CAUSE HEARING IN PERSON. THE TRIAL COURT FORCED ME TO ATTEND THE HEARING VIA ZOOM AGAINST MY WILL. | |

Raised Below: I raised this issue at the very beginning of the hearing and Judge Bauman dismissed it as not relevant to the hearing. I looked for that conversation in the transcript 1T, but could not find it).

LEGAL POINT II

31

THE TRIAL COURT ERRED BY ALLOWING BAYVIEW’S ATTORNEY TO PROCEED WITH HIS ORAL ARGUMENT.

Raised Below: I raised this request in 1T page 4 line 23 – page 5 line 6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

LEGAL POINT III

32

THE TRIAL COURT ERRED BY DENYING MY REQUEST TO EXAMINE THE MORTGAGE ASSIGNMENT OF 2/27/2009, THE FFIDAVIT OF LOST NOTE OF 2/12/2014, AND THE MORTGAGE ASSIGNMENT OF 2/28/2014 IN AN EVIDENTARY HEARING.

Raised Below: paragraph 35 (029a). In 1T page 6 line 4– page 7 line 23 and page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

LEGAL POINT IV

36

THE TRIAL COURT ERRED BY DENYING MY REQUEST TO EXAMINE THE HAM AGREEMENT OF 2015 AND SAMANTHA DICKIE’S

CERTIFICATION OF 10/18/22 IN AN EVIDENTARY HEARING.

(Raised Below: paragraph 36 (029a). In 1T page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

LEGAL POINT V

37

THE TRIAL COURT ERRED BY DENYING MY REQUEST TO COMPEL BAYVIEW TO PRODUCE AN STATEMENT UNDER OATH REAGARDING THE PARTIES OF INTERESTS OF THE NOTE PER NJ CHAPTER 225 LAW.

Raised Below: paragraph 37 (029a). In 1T page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

LEGAL POINT VI

38

LEGAL POINT VI. THE TRIAL COURT ERRED BY DENYING MY REQUEST TO COMPEL BAYVIEW TO PRODUCE AN ASSIGNMENT OF THE NOTE AND ASSIGNMENT OF THE MORTGAGE FROM BAYVIEW TO NATIONSTAR.

Raised Below: paragraph 38 (029a). In 1T page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

LEGAL POINT VII

39

LEGAL POINT VII. THE TRIAL COURT ERRED BY DENYING MY REQUEST TO GRANT ME PAIN AND SUFFERING DAMAGES AND PUNITIVE DAMAGES FOR COMMITTING FRAUD UPON THE COURT BY

BAYVIEW

Raised Below: paragraph 39 (029a). In 1T page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

LEGAL POINT VIII

40

THE TRIAL COURT ERRED BY FAILING TO ACKNOWLEDGE AND DECLARE THAT THE FORECLOSURE COURT LACKED SUBJECT MATTER JURISDICTION BY PROCEEDING WITH THE FORECLOSURE COMPLAINT FILED BY BAYVIEW ON 5/12/16.

Raised Below: paragraph 14 (026a) and paragraph 30 (028a). In 1T page 4 lines 17-22 and page 5 lines 10-14 and page 5 lines 16-21. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

LEGAL POINT IX

49

THE TRIAL COURT ERRED BY FAILING TO DISMISS THE FORECLOSURE COURT OF 5/12/16.

Raised Below: paragraph 44 (032a). In 1T page 6 line 4 – page 7 line 8. The denial order is at (221a).

LEGAL POINT X

50

THE TRIAL COURT ERRED BY FAILING TO RESTORE MY CONSTITUTIONAL RIGHTS IN THE FORECLOSURE COURT OF MONMOUTH COUNTY NJ.

Raised Below: paragraphs 30-34 (28a-29a). In 1T page 6 line 4 – page 7 line 8.

Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

CONCLUSION 50

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Group 3 List

THE NJ CONSTITUTION

THE US CONSTITUTION

ARTICLE III INJURY IN FACT

THE US 1ST AMENDMENT

THE US 4TH AMENDMENT

THE US 14TH AMENDMENT

FTCPA

PRELIMINARY STATEMENT

My name is Reza Farzan, I am the Pro Se Appellant-Defendant in this case. I have personal knowledge about this case and I am making this brief in support of my amended notice of appeal package filed on 12/8/23 (001a).

All references in volumes will be referred by there is beginning Bates pages numbers.

I am appealing the Monmouth County Foreclosure Court order made on 9/25/23 (221a) by Hon. David Bauman.

I am a Moslem immigrant. A naturalized US Citizen. I belong to a few protected classes because of my national origin, religion, age, and disabled status. My race is other than White Caucasian, a minority race.

In November of 2015 I was declared disabled permanently by the Social Security Administration (SSA).

I have no training in law. English is not my native language. I speak English with an accent.

**RELEVANT PROCEDURAL HISTORY AND STATEMENT
OF FACTS IN THE FORECLOSURE COURT¹**

In the second half of December of 2022 I was able to obtain a copy of the court order of 12/20/2010 by Hon. Glenn Grant (068a) and a copy of the Group 3 List (Page 400 of the Group 3 List, 087a.). Those documents were kept on eCourt under docket F-059553-10 and sealed for many years. The public does not have access to it and it took me a long time to find them.

**A BRIEF DESCRIPTION OF THE NJ STATE RESIDENTIAL
FORECLOSURE REGIME**

**FILING THE FIRST FORECLOSURE COMPLAINT BY CHASE
HOME FINANCE LLC (CHASE) on 3/10/2009**

I explained all the relevant facts in full detail in my Affidavit at 037a. In this section I'll summarize the roles of all state courts and agencies in my foreclosure cases so the Appellate Judges understand what has been going on.

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1. The facts of this case are four documents submitted by Bayview on 5/12/16 and 12/30/16 as I explained in this brief (065a, 088a, 097a, and 103a). Samantha Dickie submitted her certification (115) on 10/18/22. The rest of this case is procedural history. The facts and procedural history are intertwined in this case.

On 2/14/2005 I signed a promissory Note (091a) and gave it to American Mortgage Network Inc. (AMN), my loan originator. In return AMN gave me a loan to purchase my current house via a mortgage. I did not give my Note to the entire US mortgage industry. I gave it to AMN only, my loan originator. On 12/30/16 Bayview Loan Servicing LLC (Bayview) offered the Affidavit of Lost Note of 2/12/2014 Fabricated by Chase (088a). Chase attached an unauthenticated alleged copy of the alleged Note as Attachment 1 (091a).

AMN went out of business by 12/31/2005 and did not indorse my Note (091a) to another party and did not assign the Note (091a) to another party.

Since 12/31/2005 AMN has not come forward to demand its loan from me and the loan is time barred for ten years based on NJSA 12A:3-118(b). That means even if AMN shows up at my front door today, based on that NJ statue I do not owe them that loan.

On 2/27/2009 Beth Cottrell a manager at Chase Home Finance LLC (Chase) disguised as an employee of Mortgage Electronic Registration Systems Inc. (MERS), and Stacy Spohn a Chase employee robo-signed an assignment of mortgage on my property from MERS (as nominee of AMN) to Chase. Jennifer Jacoby robo-notarized that forged mortgage assignment (065a).

MERS never had legal standing to assign a Note or Mortgage in NJ. MERS never had legal standing to be a custodian of a mortgage Note in NJ.

Since AMN went out of business by 12/31/2005, the alleged nominee relationship between AMN and MERS stopped after 12/31/2005. Definitely on 2/27/2009, about four years later, MERS could not claim that it was the nominee of AMN, but it did claim that in the alleged assignment of mortgage of 2/27/2009 (065).

The alleged assignment of 2/27/2009 (065a) was never authenticated by a certificate of acknowledgment required by NJSA 2A:82-17. And it was never authenticated by an affidavit or certification of personal knowledge required by Rule 1:6-6.

On 3/10/2009 based on the alleged assignment of mortgage of 2/27/2009 (065a) Chase filed a foreclosure complaint in the NJ Office Of Foreclosure (NJ OOF) against my house. It was docketed as F-12718-09 and sent to the Monmouth County Foreclosure Court in Freehold NJ.

Chase was not the owner of the Note (091a) and failed to disclose the owner of the Note in the Foreclosure Complaint of 3/10/2009 which was in violation of the NJ Court Rule 4:64-(1)(b)(11). The foreclosure trial judge failed to enforce that rule. The foreclosure trial judge failed to dismiss the foreclosure complaint filed by Chase on 3/10/2009; therefore the foreclosure judge violated my constitutional rights specifically the US 4th and 14th Amendments.

In the financial crisis of 2009-2010 major servicers like Chase were filing foreclosure complaints in NJ and other states based on forged and robo-signed documents.

On 12/20/2010, Hon. Glenn Grant, a high ranking NJ State Judge and the Chief of the NJ Administrative Office of the Courts (NJ AOC), in his Administrative Order 01-2020 (068a) declared that the alleged assignment of 2/27/2009 robo-signed by Beth Cottrell was fraudulent and it had to be removed from the Chase's foreclosure complaint of 3/10/2009 and then he suspended that Foreclosure complaint.

Based on that order of 12/20/2010 by Hon. Grant (068a), the NJ Judiciary identified all suspended foreclosure complaints and added them to a list called the Group 3 List and saved it on eCourt under F-059553-10 docket. That docket is now sealed by the NJ OOF and the public does not have access to its content. The reason is unknown. My name was on the Group 3 List, it is on page 400 with Chase's name and the Foreclosure Docket number (087a).

Based on that order of Hon. Glenn (068a), Chase was supposed to cure the deficiencies of the alleged assignment of mortgage of 2/27/2009 (065a) and bring it back to record it again in the Monmouth County Hall of Records.

But Chase in violation of the court order of 12/20/2010 (068) did not cure the deficiencies of the alleged assignment of mortgage of 2/27/2009 (065a). Based

on the forged assignment of mortgage of 2/27/2009, Chase forged the Affidavit of Lost Note of 2/12/2014 (088a) and the Assignment of mortgage of 2/28/2014 (097a) from Chase to Bayview Loan Servicing LLC (Bayview) and sold them all to Bayview for a penny on a dollar.

The alleged assignment of 2/28/2014 (097a) was never authenticated by a certificate of acknowledgment required by NJSA 2A:82-17. And it was never authenticated by an affidavit or certification of personal knowledge required by Rule 1:6-6.

The alleged affidavit of Lost Note fabricated by Chase on 2/12/2014 (088a) was not recorded in the Hall of Records. It was unauthenticated and it had an unauthenticated attachment (091a) which was an unauthenticated copy of the alleged Note. In the unauthenticated copy of the alleged Note (091a) there was no indorsement from AMN to any party. Chase, in the alleged Affidavit of Lost Note of 2/12/2014 (088a) did not explain from where/who it got the Note (091a), how it got the Note, and when it got the Note. Those details are required by the NJ UCC Laws for a lost Note affidavit. The alleged Affidavit of Lost Note of 2/12/2014 (088a) did not have wet ink original and it was submitted to the Foreclosure Court of the Superior Court of Monmouth County on 12/30/16 by Bayview's attorney.

On 1/4/2016 finally Chase and Bayview dismissed their own foreclosure complaint of 3/10/2009 (F-12718-09) which was already suspended by Hon. Glenn Grant in 12/20/2010's order (068a) because of the alleged assignment of mortgage of 2/27/2009 from MERS to Chase (065a).

In preparation for filing the second foreclosure complaint; sometimes in 2015 Bayview hired a notary public named Samantha Dickie to forge my signature on an alleged loan modification agreement called the HAM Agreement of 2015 (103a). I have never seen the HAM Agreement and have never signed it. I have never seen Samantha Dickie and never signed any document before her. Paragraph L of that document is all about MERS and that document got its legitimacy from MERS as the nominee for AMN which never existed on 2/27/2009. MERS never had legal standing to assign a Note or mortgage or to be the custodian of a Note in the state of NJ. Also the nominee relationship between AMN and MERS ended on 12/31/2005 when AMN went out of business.

On 10/18/22, Samantha Dickie made a certification to the Law Division of the Superior Court of Monmouth County that I appeared before her to sign her Notary Journal. She forged my signature again. Ironically she pleaded in her certification that she did not recall meeting me (115a).

FILING THE SECOND FORECLOSURE COMPLAINT BY

BAYVIEW on 5/12/16

On 5/12/2016 Bayview filed a Foreclosure complaint in the NJ OOF (141a) based on the alleged assignment of mortgage of 2/27/2009 (a recycled forged mortgage document 065a), the alleged assignment of 2/28/2014 (097a) and the alleged HAM agreement of 2015 (103a). Bayview filed that complaint as the owner and the servicer of the Note (paragraph 14 of page 144a). It was docketed as F-013470-16. Bayview committed fraud upon the foreclosure court by submitting a recycled forged document, namely the alleged assignment of mortgage of 2/27/2009 (065a). The NJ OOF and the Foreclosure Court of Monmouth County never had subject matter jurisdiction over the Foreclosure complaint of 5/12/16 (141a), because they suspended the Foreclosure Complaint of 3/10/2009 because of the fraudulent mortgage Assignment of 2/27/2009 (065a).

The NJ OOF violated my Constitutional Rights specifically the US 4th and 14th Amendment by accepting the alleged assignment of mortgage of 2/27/2009 (065a). Because, on 12/20/2010, the NJ OOF was warned by Hon. Grant that the alleged assignment of mortgage of 2/27/2009 was robo-signed and forged (068a), and the NJ OOF was in possession of the Group 3 List (087a) and was

aware that my name was on that list. Chase's name and the foreclosure docket number were on that list too, next to my name (087a).

In the second foreclosure complaint (F-013470-16), filed on 5/12/16 (141a), Bayview committed six major fraud upon the court, including perjury and forgery:

- Under paragraph 14.a (146a) Bayview falsified that: in the mortgage assignment of 2/27/2009, MERS assigned the Note and Mortgage to Chase. That is false, because the assignment's text stated that MERS only assigned the mortgage to Chase (066a).
- Under paragraph 14.b (144a) Bayview falsified that: in the assignment of 2/28/2014, Chase assigned the Note and Mortgage to Bayview. That is not true, because the assignment's text stated that Chase only assigned the mortgage to Bayview (100a).
- Under paragraph 15.a,b,c,d,e,f (144a-145a) Bayview falsified that I signed the forged HAM Agreement of 2015 and I owed them a lot of money. I never signed that document and never agreed to anything.
- In paragraphs 35, 36, 37 (150a) Bayview claimed that they had the physical Note in their office and lost it. That was false.

- Nowhere in their complaint (141a) had Bayview showed injury. How much did Bayview pay to Chase to buy the Note? Bayview did not show injury in fact to prove that it had state and Federal Claims.
- All in all, Bayview falsified the facts to pass through the NJ court rules for a valid NJ foreclosure complaint. Bayview falsified the facts that it was the owner of the Note and it was in possession of the Physical Note and lost it and I signed the alleged HAM Agreement in front of Samantha Dickie. All of them are blatant lies. Bayview showed no injury in fact to show that it had State or Federal claim. According to the Article III Injury In Fact Bayview had no claim at all.

On 7/27/16 I filed my answer and counterclaim in response to the foreclosure complaint of 5/12/16 that I received on 6/23/16 (171a). I exposed the lies in the Foreclosure Complaint (141a) and the forged mortgage documents submitted by Bayview and I demanded jury trial.

On 9/7/16, in response to my RESPA request; Bayview, outside of their attorneys, directly wrote me that the Owner of the Note was Freddie Mac not Bayview. Bayview did not list Freddie Mac as a party of interest in the complaint (141a) which was in violation of the NJ Court Rule 4:64-(1)(b)(11). That pleading by Bayview, on 9/7/16, invalidated Bayview's claim in the Foreclosure Complaint that it had the Note in its possession and lost it (150a).

On 12/30/2016 Bayview's attorney submitted the Affidavit of Lost Note of 2/12/2014 fabricated by Chase (088a). In that alleged affidavit Chase claimed that it had the physical Note and lost it. That pleading by Chase invalidated Bayview's pleading on 9/7/16 that Freddie Mac was the owner of the Note.

Because Bayview was ignoring my discovery questions I had to file a motion to dismiss the Foreclosure Complaint (141a) based on NJ court rules. A motion hearing was ordered by the Foreclosure trial Judge Patricia D. Cleary for 1/6/17. In the hearing of 1/6/17 I questioned the alleged mortgage assignment of 2/27/2009 (065a) and told the judge that Chase and MERS had faked that assignment. Judge Clearing said because that alleged assignment was recorded in the Hall of Records she considered that valid. She gave Bayview another chance in that hearing and rescheduled another discovery; ending on 2/28/17.

On 1/6/2017 in my motion hearing in state court; Judge Cleary, who is retired now, said the documents recorded in the Monmouth County Hall of Records had nothing to do with my foreclosure case. Then she said I could not file charges against MERS and Chase in her court:

“MR. FARZAN: There's another reason, Your Honor. MERS is a defendant in this case. And MERS and Chase have filed fake documents, registered and recorded fake documents in Monmouth County.

THE COURT: What does that have to do with your case?

MR. FARZAN: Because I don't think I can file, I want to file charges against Chase and MERS --

THE COURT: Well, you're not filing them with me."

Right after the 1/6/17 hearing Bayview continued to ignore my discovery requests and my notices for depositions.

On 1/13/17 my expert witness, Marilyn English, added her affidavit to the state case docket on eCourt. In her affidavit she stated that the alleged assignments of 2/27/2009 (065a) and 2/28/2014 (097a) did not transfer any value from AMN to MERS, or Chase, or Bayview. And the Affidavit of Lost Note of 2/12/2014 fabricated by Chase (088a) was worthless.

On 1/27/17 Bayview filed a motion for summary judgment based on the four forged mortgage documents. I responded and filed my own motion to dismiss.

On 3/3/17 in the hearing for Summary Judgment Motion Judge Cleary admitted the four forged documents submitted by Bayview as evidence against my property because they were "recorded" in the Hall of Records. She denied the affidavit of my expert witness Marilyn English and she failed to enforce the NJ UCC laws which was the NJ laws to enforce a residential mortgage Note. She dismissed my answer and counterclaim (171a). She denied my jury trial demanded in my answer and counterclaim filed on 7/27/2016. She did not allow me to talk in my defense in the hearing. Judge Cleary violated my constitutional

rights specifically the US 1st and 4th, 7th and 14th Amendments, and Article One of the NJ State Constitution.

In the motion for Summary Judgment hearing of 3/3/2017 the trial judge Hon. Patricia Cleary and Bayview's attorney Michael Blaine agreed that since the unauthenticated copy of the alleged assignments of the mortgage were recorded in the Monmouth County Hall of Records they were not defective. The transcript of 3/3/17 page 6 lines 8-14:

“MR. BLAINE: ... But the assignments of mortgage Are before the Court as a legal question for the Court to examine them. And if they're defective somehow legally the Court should make that determination.

THE COURT: They're recorded.

MR. BLAINE: And they're recorded, yes. And I would assert they're not defective.”

On 8/20/19 Bayview filed a motion for final judgment in the NJ OFF. In this motion, once again, Bayview pleaded that it owned the mortgage; not Freddie Mac. Bayview attached the fraudulent mortgage assignments of 2009 (065a) and 2014 (097a), the fraudulent affidavit of lost note of 2/12/14 (088a), and the forged HAM agreement of 2015 notarized by Samantha Dickie (103a). My deadline to oppose it was 9/3/19.

On 9/3/19 I filed my opposition to Bayview's motion for final judgment. But the NJ OOF ignored my opposition and recommended a final judgment order to Judge Katie Gummer. Ironically Judge Gummer had recused herself from my case on 1/25/19. The NJ OOF violated my constitutional rights specifically the US 1st, 4th, and 14th Amendments.

On 9/23/19 the Monmouth County Clerk wrote me a letter that they did not examine any documents that parties recorded in the Hall of Records because they assumed that parties had examined them before recording (125a).

On 3/29/20 my Expert Witness notarized his Affidavit about the mortgage documents submitted by Bayview in the Foreclosure Court. Mr. Joseph Esquivel pleaded in his affidavit that the assignments of 2/27/2009 (065a) and 2/28/2014 (097a) transferred no value from AMN to Chase or Bayview; and the unauthenticated copy of the alleged Note (091a) was worthless.

On 1/13/22, based on the four forged mortgage documents submitted by Bayview the NJ OOF granted Writ of Execution to Bayview and sent it to the Monmouth County Sheriff for sheriff sale.

On 2/28/22 and 3/2/22 I filed two motions in the foreclosure court to vacate the writ of execution issued by the NJ OOF and to vacate the Sheriff Sale of 4/4/22. A hearing was set to 4/1/22 for both motions before Judge Joseph Quinn. He

denied them both.

On 4/8/22 I filed my amended notice of appeal in the NJ Appellate Division and it was docketed as A-002336-21. On 6/7/22 Hon. Haas and Hon. Mitterhoff denied my appeal and did not provide statement of reason based on 2:11-3(e)(1)(E), In that order they claimed that Bayview had the Note, which was false. I filed a motion for reconsideration which was denied by Hon. Michael Hass without a statement of reason. On 7/19/23. I requested a certification from the Supreme Court of NJ. It was docketed as 088508. On 11/27/23 I filed my brief for my Petition for Certification in the Supreme Court of NJ.

After the motions hearings in the Foreclosure Trial Court on 4/1/22, I had three motions hearings on 10/4/22, 5/12/23, and 9/25/23.

On 5/19/23 I filed an Amended Notice of Appeal for orders of 10/4/22 and 5/12/23, from Hon. Joseph Quinn, in the NJ Appellate Division; it was docketed as A-0002787-22. On 11/3/23 I submitted my Appellant Brief after curing the deficiencies.

On 9/19/23 I uploaded my Order to Show Cause (OSC) package into JEDS. The OSC form is at (020a) and the Verified Complaint package starts at (023a). Bayview had six days to respond to my OSC package, but they ignored me and

they were in default.

9/25/23, was the hearing date for my Order to Show Cause, to stop the sheriff sale and to grant other reliefs. The transcription vendor, Ms. Tracy Gribben, advised me to attend the hearing in person, because she could hear me much better than Zoom. She said she usually has a hard time understanding me in Zoom hearings because of my “heavy” English accent. Additionally I can hear better when I attend the court in person. So, in the morning of 9/25/23, around 8:30 am, I was in the parking lot of the Monmouth County Courthouse. I called Judge Bauman Chambers and someone picked up the phone and I asked her name. She said she was Judge Bauman’s secretary. I told her I wanted to attend my hearing in person. She said “the Judge wanted it by Zoom” so I better go back home and attend my hearing in Zoom. The transcript of that hearing is at 1T. As you can see most of the time I had to ask the judge to repeat. Also in 1T there are a few “indiscernible” sounds that the transcriber could not figure them out.

On 12/8/23 I submitted my Amended Notice of Appeal (001a) for the order of 9/25/23, from Hon. David Bauman, in the NJ Appellate Division. It was docketed as A-000789-23. This instant Brief is for that Appeal.

While this case was scheduled for sheriff sale on 5/31/22, on 5/13/22 Bayview “sold” the ownership of the Note to Nationstar Mortgage LLC (Nationstar) from TX (AKA RightPath Servicing). The transfer was conducted without an assignment required by NJSA 46:9-9. The sheriff sales have been adjourned every few weeks.

The alleged transfer of the loan from Bayview to Nationstar happened while my house was in sheriff sale. The sheriff is required to demand an assignment from Bayview to Nationstar mandated by NJSA 46:9-9. But the Sheriff just forwarded my letter to Bayview, and Bayview ignored it; the Sheriff did not demand the required assignment. I wrote two letters to the Sheriff. On 1/10/23 (127a), and another on 1/30/23 (134a).

The sheriff has another problem. That is the recycled forged mortgage assignment of 2/27/2009 (065a) which was called fraudulent by Hon. Glenn Grant in his order of 12/20/2010 (068a) and ordered Chase to remove it from the Foreclosure Court. But Chase forged more documents based on that and sold them to Bayview for a penny on a dollar. That sheriff sale is illegal. The Monmouth County Sheriff must remove my house from his sales list. The Monmouth County Sheriff has been violating my constitutional rights specifically the US 1st, 4th, and 14th Amendments.

LEGAL ARGUMENT

LEGAL POINT I. THE TRIAL COURT ERRED BY DENYING MY REQUEST TO ATTEND THE ORDER TO SHOW CAUSE HEARING IN PERSON. THE TRIAL COURT FORCED ME TO ATTEND THE HEARING VIA ZOOM AGAINST MY WILL.

Raised Below: I raised this issue at the very beginning of the hearing and Judge Bauman dismissed it as not relevant to the hearing. I looked for that conversation in the transcript 1T, but could not find it.

It was obvious that attending the hearing on 9/25/23 in person would have been a lot better than attending that by Zoom. I was proactive and actually drove to the court in early morning to make it happen. But Judge Bauman Chambers did not allow me to attend the hearing in person. That was violation of my constitutional rights. On the hearing date of 9/25/23 I raised it with Judge Bauman, he ignored it and the transcriber did not cover it in the transcript.

LEGAL POINT II. THE TRIAL COURT ERRED BY ALLOWING BAYVIEW'S ATTORNEY TO PROCEED WITH HIS ORAL ARGUMENT.

Raised Below: I raised this request in 1T page 4 line 23 – page 5 line 6. Bayview did not oppose and did not deny my claims and arguments. The denial

order is at (221a).

NJ Rule 1:6-2(a) states: *“The motion shall be deemed uncontested and there shall be no right to argue orally in opposition unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought.”* Bayview had six days to respond to my OSC, but failed.

Also Bayview did not oppose or deny any of reliefs that I requested. I raised that with Judge Bauman and he did not elaborate but ruled against me.

LEGAL POINT III. THE TRIAL COURT ERRED BY DENYING MY REQUEST TO EXAMINE THE MORTGAGE ASSIGNMENT OF 2/27/2009 (065a), THE FFIDAVIT OF LOST NOTE OF 2/12/2014 (088a), AND THE MORTGAGE ASSIGNMENT OF 2/28/2014 (097a) IN AN EVIDENTARY HEARING.

Raised Below: paragraph 35 (029a). In 1T page 6 line 4– page 7 line 23 and page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

The Mortgage Assignment of 2/27/2009 from Chase to MERS (065a) was forged and on 12/20/10 Hon. Glenn Grant in his Order called that mortgage assignment fraudulent (068a). He ordered Chase to withdraw that assignment and cure its deficiencies and re-file it. Chase violated that order and based on that forged mortgage assignment fabricated the Affidavit of Lost Note of

2/12/14 (088a) and the Mortgage Assignment of 2/28/14 (097) and sold it to Bayview.

In his Order of 12/20/10 (068a) Hon. Grant suspended the first Foreclosure Complaint against my house (F-12718-09) because of that mortgage assignment. On 1/6/17 and 3/3/17 I raised the issue of that mortgage assignment from MERS to Chase (065a) being fake but Judge Cleary ignored my objection and said that assignment had nothing to do with the Foreclosure Complaint. No one else but Hon. Grant has examined the Mortgage assignment of 2/27/2009 from MERS to Chase (065a).

Bank of New York as Trustee v. Michael J. Raftogianis, et al., Case No. F-7356-09, Superior Ct. of NJ: ***“Beth Cottrell” as determined by Judge Todd in this case is just a 'perjurer for profit' with far too many versions of her signature to determine which is the 'actual' signature. Ms Cottrell gave Deposition on May18, 2010 and the day before. The May 17, 2010 Deposition was for Chase Home Finance v. Koren.”*** Beth Cottrell was one of the robo-signers on the mortgage assignment of 2/27/2009 (065a) in my case. The mortgage assignment of 2/27/2009 was called fraudulent by Hon. Grant in his order of 12/20/2010 (068) because Beth Cottrell robo-signed that.

“We held that the trial court should not have considered an assignment that was not "authenticated by an affidavit or certification based on personal knowledge.”” *Id.* at 600, 15 A.3d 327. *Deutsche Bank Nat'l Tr. Co. v. Mitchell*, 422 N.J. Super. 214, 225 (App. Div. 2011), and reaffirmed on 07/01/2020 in *Investors Bank v. Torres*, (A-55-18) (082239) (2020)). The mortgage assignments of 2/27/2009 (065a) and 2/28/2014 (097a) in my case were not authenticated by affidavits or certifications of personal knowledge but on 1/6/17 judge Cleary blamed it on the County Clerk and on 9/23/19 the county clerk said she did not examine the recorded documents (125a) and the other judges upheld Judge Cleary's orders who was the initial trial judge. None of the documents submitted by Bayview were authenticated by a Certificate of Acknowledgement in violation of N.J.S.A. 2A-82-17.

In the Affidavit of Lost Note of 2/12/14 (088a) Chase did not explain the environment in which it obtained the Note (091a). If Chase claimed that it received the Note (091a) from MERS, MERS never had the legal standing to be the custodian of a Residential Mortgage Note. Another important point about using that Affidavit of Lost Note of 2012 (088a) is that Chase allegedly lost the Note (091a), not Bayview and Bayview filed for foreclosure. According to UCC 3-309 and NJSA 12A:3-309 Bayview did not have legal standing to file for foreclosure because it was not in possession of the Note when it was lost.

An unauthenticated copy of the alleged Note, submitted by Bayview (091a).

The unauthenticated alleged copy of the Note (091) is not indorsed to any party and there is no assignment of the Note to any party. All assignments that were submitted by MERS (065a), Chase (097a) were unauthenticated mortgage assignments.

Bank of America v. Limato, Docket No. A-4480-10T3 ***“Holding a mortgagee's request for summary judgment to establish itself as a holder of a negotiable instrument must be based on properly authenticated documents, which must be based on personal knowledge”***. None of the documents submitted by Bayview in my foreclosure case was authenticated. And Bayview did not have a holder status to file for foreclosure.

In Re Raymond Vargas, Debtor United States Bankruptcy Court, CD. California. October 21, 2008. ***“A promissory note cannot be admitted into evidence unless it is authenticated. Federal Rule of Evidence 901(a).”*** In my case the alleged copy of the subject Note (091a) which was attached to the alleged Affidavit of Lost Note” of 2/12/2014 was not authenticated (088a).

Bayview did not oppose or deny this request to examine the alleged assignment of 2/27/2209 (065a), but Judge Bauman denied my request without statement of reason.

LEGAL POINT IV. THE TRIAL COURT ERRED BY DENYING MY REQUEST TO EXAMINE THE HAM AGREEMENT OF 2015 AND SAMANTHA DICKIE'S CERTIFICATION OF 10/18/22 IN AN EVIDENTARY HEARING.

Raised Below: paragraph 36 (029a). In 1T page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

The HAM Agreement of 2015 is at (103a).

The Certification of 10/18/22 of Samantha Dickie is at (115a).

Samantha Dickie, a former notary public, hired by Bayview, forged my signature on two documents. The HAM Agreement of 2015 (103a) and her Notary Journal that she submitted to the Law Division on 10/18/22 (115a). I disputed that and let the trial judge know that I have never known Samantha Dickie, have never seen her, and have never signed any document before her. This is a dispute between Samantha Dickie and me. To resolve that dispute the Judge must give me a chance to overcome the presumption of validity created by her because she was a notary public. Judge Bauman took her word over my word without any investigation. That is discrimination and racism.

Potter v. Steer COURT OF CHANCERY OF NEW JERSEY Nov 16,1923

122 A. 685 (Ch. Div. 1923) *"It is also well settled that the certificate of*

acknowledgment is only prima facie evidence of its contents, and that it may be shown to be untrue. Wright v. Wells, 12 N.J. Law, 131; Marsh v. Mitchell, 26 N. J. Eq. 497; Whalen v. Manchester Land Co., 65 N.J. Law, 206, 47 Atl. 443; Brady v. McHugh, supra. But to establish its untruth and overcome the strong presumption of its integrity the proof must be clear, satisfactory, and convincing.” ... “The bill will be dismissed as to Mrs. Steer.” In this case Mrs. Steer husband forged her signature on a document to steal her property. The forged signature was notarized. Mrs. Steer challenged that and the Chancery Division Judge granted discovery and eventually ruled that Mrs. Steer was right. So the State of NJ does have laws to overcome the presumption of validity. Bayview did not oppose or deny this request, but Judge Bauman denied my request to examine documents (103a) and (115a) statement of reason.

LEGAL POINT V. THE TRIAL COURT ERRED BY DENYING MY REQUEST TO COMPEL BAYVIEW TO PRODUCE AN STATEMENT UNDER OATH REGARDING THE PARTIES OF INTERESTS OF THE NOTE PER NJ CHAPTER 225 LAW.

Raised Below: paragraph 37 029a. In 1T page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

I wrote two letters to the Sheriff. On 1/10/23 (127a), and another on 1/30/23 (134a). The Sheriff did not demand that statement from Bayview and did not remove my house from the Sheriff Sale list. The NJ Chapter 225 Law of 1979 is very clear. Judge

Bayview did not oppose or deny this request, but Judge Bauman denied my request without statement of reason.

“CHAPTER 225, LAWS OF N.J. 1979 (APPROVED OCTOBER 12, 1979):

Whenever an application is made to the sheriff of any county for the sale of any real property, whether under execution or pursuant to any other writ, judgment or order, the sheriff shall not proceed with such sale unless and until the applicant shall furnish to the sheriff a statement, under oath, listing the names of all mortgagees and other holders of encumbrances constituting “consideration” as defined in section 1 (c) of the act is a supplement (C. 46:15-5(c)), to which such sale shall be subject.” The Monmouth County

sheriff refused to demand that Bayview submit such a statement under the NJ Chapter 225 law and he refused to remove my house from the sales list. Judge

Bayview did not oppose or deny this request, but Judge Bauman denied my request without statement of reason.

LEGAL POINT VI. THE TRIAL COURT ERRED BY DENYING MY REQUEST TO COMPEL BAYVIEW TO PRODUCE AN ASSIGNMENT

**OF THE NOTE AND ASSIGNMENT OF THE MORTGAGE FROM
BAYVIEW TO NATIONSTAR.**

Raised Below: paragraph 38 (029a). In 1T page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

N.J.S.A. 46:9-9 states: *“All mortgages on real estate in this State, and all covenants and stipulations therein contained, shall be assignable at law by writing, whether sealed or not, and any such assignment shall pass and convey the estate of the assignor in the mortgaged premises, and the assignee may sue thereon in his own name, but, in any such action by the assignee, there shall be allowed all just set-offs and other defenses against the assignor that would have been allowed in any action brought by the assignor and existing before notice of such assignment.”* The transfer of the Note and the Mortgage from Bayview to Nationstar is unlawful because there is no assignment. Bayview did not oppose or deny this request, but Judge Bauman denied my request without statement of reason.

**LEGAL POINT VII. THE TRIAL COURT ERRED BY DENYING MY
REQUEST TO GRANT ME PAIN AND SUFFERING DAMAGES AND
PUNITIVE DAMAGES FOR COMMITTING FRAUD UPON THE
COURT BY BAYVIEW**

Raised Below: paragraph 39 (029) and Dr. Lipton reports at (222a). In 1T page 8 lines 2-6. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

During the last seven years, when the second foreclosure complaint was filed by Bayview on 5/12/16, my family and I have been going through extreme emotional stress. In my Verified Complaint I explained to the trial court I the hardship that my family and I have been going through; paragraphs 1-5 (024a). Dr. David Lipton from Red Bank NJ has been my therapist for the past few years. Dr. Lipton reports on 5/7/22 and 3/26/23 at (222a). Bayview did not oppose my requests and did not deny my requests. Judge Bauman denied my requests without statement of reason.

LEGAL POINT VIII. THE TRIAL COURT ERRED BY FAILING TO ACKNOWLEDGE AND DECLARE THAT THE FORECLOSURE COURT LACKED SUBJECT MATTER JURISDICTION BY PROCEEDING WITH THE FORECLOSURE COMPLAINT FILED BY BAYVIEW ON 5/12/16.

Raised Below: paragraph 14 (026a) and paragraph 30 (028a). In 1T page 4 lines 17-22 and page 5 lines 10-14 and page 5 lines 16-21. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

The Foreclosure Court of Monmouth County Superior Court (the Trial Court) never had subject matter jurisdiction over the Foreclosure Complaint against my house filed on 5/12/16 by Bayview. I have not seen that the Trial Court verify the foreclosing Plaintiff standing to file for foreclosure. The Court grants summary judgment motions to any Plaintiff who files for foreclosure in Monmouth County. Based on my personal knowledge the Trial Court granted summary judgments motions to foreclosing Plaintiffs without verifying their standings to foreclose. They are: Lori McEvan, James Ezell, Ajay Kajla, Nicholas Purpura, and Reza Farzan.

Bayview has submitted five mortgage documents in this case. They are:

- The Mortgage Assignment of 2/27/2009 from MERS to Case (065a)
- The Affidavit of Lost Note of 2/12/14 (088a). An unauthenticated copy of the alleged Note (091a) which was submitted as attachment1 to the Affidavit of Lost Note of 2/12/14.
- The Mortgage Assignment of 2//28/14 from Chase to Bayview (097a)
- The HAM Agreement of 2015 103a)
- The Certification of Samantha Dickie of 10/18/22 (115a)

Bayview filed its Foreclosure Complaint against my house on 5/12/16. The Trial Court lacked subject matter jurisdiction over that Complaint since day one (5/12/16) for the following reasons:

Authentication:

None of the aforementioned submitted documents were authenticated by Certificates of Acknowledgements in violation of N.J.S.A 2A:82-17.

None of the mortgage assignments of 2/27/2009 (065a) and 2/28/2014 (097a) were authenticated by affidavits or certifications of personal knowledge in violation of NJ Court Rule 1:6-6.

Statute of Limitation:

On 12/30/16 Bayview submitted the Affidavit of Lost Note of 2/12/14 to the Trial Court (088a). An unauthenticated copy of the alleged Note was attached to that affidavit as Attachment 1 (091a). That alleged Note was signed on 2/14/2005. That Note was not indorsed to any party. There was no assignment of the alleged Note to any party. So since 2/14/2005 AMN has been the Note Holder of my mortgage. Since 2/14/2005 AMN has not come forward to demand its loan. So ten full years later on 2/14/2015 the mortgage Note became time barred and uncollectable based on N.J.S.A. 12A:3-118(a) and (b). On 5/12/16 Bayview filed a foreclosure complaint against my house based on a time barred Note. The Trial Court lacked subject matter jurisdiction over the Foreclosure Complaint of 5/12/16 since day one, namely the same day it was filed (5/12/16).

Bayview Claimed No Injury In Fact:

Bayview in its Foreclosure Complaint of 5/12/16 against my house (141a) claimed no injury at all. Bayview was a debt collector and paid a few hundred dollars to Chase to buy the Mortgage Assignments of 2/27/2009 (065a), the Mortgage Assignment of 2/28/2014 (097a), and the Affidavit of Lost Note of 2/12/2014 (088a). Then Bayview forged the HAM Agreement of 2015 (103a) to defraud me and the courts to cash in the full amount of the Note. Bayview is in violations of FDCPA unfair and deceptive practices.

In re D'Aconti, 719 A. 2d 652 - NJ: Appellate Div. 1998

"Before addressing the substance of petitioner's constitutional arguments, we question petitioner's standing to raise the issues presented. In order to have standing, a plaintiff must have suffered an injury in fact, the injury must be 'fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court,' and it must be likely that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351, 364 (1992)." Those case laws from the US Supreme

Court and from the NJ Appellate Division are applications of the Article III Injury In Fact to Federal claims and state claims. Article III Standing Requirements is directly from the US Constitution. Bayview did not reveal how much it paid Chase for the forged recycle mortgage assignment of 2/27/2009

(065a), the Affidavit of Lost Note of 2/12/14 (088a), and for the mortgage assignment of 2/28/14 (097a). Also Bayview did not reveal how much it paid Samantha Dickie to forge my signature on the HAM Agreement of 2015 (103a) and to forge my signature on her Notary Journal dated 10/18/22 (115a). The total costs of that forgery operation cannot exceed \$1,000. And Bayview wants to take my house for that. In the Foreclosure Complaint of 5/12/16 Bayview did not prove any injury in fact and it lacked Article III Standing for a Federal Claim and State claim. The Trial Court lacked subject matter jurisdiction over the Foreclosure Complaint of 5/12/16 since day one (5/12/16).

Bayview Was Never in Possession of the Alleged Note

On 12/30/16 Bayview submitted the alleged Affidavit of Lost Note of 2/12/14 fabricated by Chase (088a). In that alleged affidavit Chase claimed that it had the Note (091a) in its possession and lost it. So they claimed the alleged Note was lost and never got to Bayview. So Bayview was never in possession of the alleged Note. According to UCC 3-309 and NJSA 12A:3-309 Bayview did not have legal standing to file for foreclosure because it was not in possession of the Note when it was lost. Therefore the Trial Court never had jurisdiction over the Foreclosure Complaint filed against my house by Bayview on 5/12/16.

Bayview is a debt collector and forged five documents to cash in full price.

N.J.S.A. 12A:3-202 and N.J.S.A. 12A:3-203 govern debt collectors in NJ.

Bayview Resubmitted the Recycled Forged Mortgage Assignment of 2/27/2009

On 2/27/2009 Chase forged the mortgage assignment of 2/27/2009 from MERS to Chase (065a). On 3/10/2009 Chase filed its first foreclosure against my house (F-12718-09). On 12/20/10 Hon. Glenn Grant issued his order that the Mortgage Assignment of 2/27/2009 robo-signed by Beth Cottrell and he ordered Chase to withdraw that mortgage assignment and cure its deficiencies and re-file it (068a). Hon. Grant suspended the Foreclosure Complaint Of 3/10/2009 and added my name to the Group 3 List (087a). Hon. Glenn suspended the Foreclosure Complaint of 3/10/2009 because of the forged assignment of 2/27/2009 (065a). On 5/12/16 Bayview filed the Foreclosure Complaint of 5/12/16 (141a) based on the same recycled forged assignment of 2/27/2009 (065a). The Foreclosure Complaint of 5/12/16 (141a) must have been suspended for the reason that the Foreclosure Complaint of 3/10/2009 was suspended by Hon. Grant, namely the forged assignment of mortgage of 2/27/2009. Therefore the Trial Court never had subject matter jurisdiction over the Foreclosure Complaint of 5/12/16 (F-013470-16) (141a) since day one.

The Foreclosure Complaint (141a) Was in Violation of NJ UCC Laws

The New Jersey Supreme Court in case *Investor Bank v. Torres* July 1, 2020 stated: *[t]he Uniform Commercial Code was drafted against the backdrop of*

existing bodies of law, including the common law and equity. And relies on those bodies of law to supplement it[s] provisions in many important ways. At the same time, the Uniform Commercial Code is the primary source of commercial law rules in areas that it governs, and its rules represent choices made by its drafters and the enacting legislatures about the appropriate policies to be furthered in the transactions it covers. Therefore, while principles of common law and equity may supplement provisions of the Uniform Commercial Code, they may not be used to supplant its provisions, or the purposes and policies those provisions reflect, unless a specific provision of the Uniform Commercial Code provides otherwise. In the absence of such a provision, the Uniform Commercial Code preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies.” In my foreclosure case (141a) no judge enforced the NJ UCC laws. I am not sure what law the judges enforced. Judge Cleary granted Summary Judgment to Bayview, because Bayview filed for foreclosure, without legal standing to foreclose. Judge Katie Gummer, Judge Joseph Quinn, and Judge David Bauman upheld Judge Cleary’s Summary Judgment Order.

USBC District of NJ in The Matter of John T. Kemp Case No. 08-18700-JHW Filed 11/16/2010. *“The court noted that the Bank of New York never had possession of the note because it was not delivered and indorsed and therefore*

the Bank of New York was not a "holder" under the New Jersey UCC. Also preventing the Bank of New York from becoming a "holder" was that there was not a proper indorsement on the note itself, or an allonge that was executed at the time that the proof of claim was filed. The Bank of New York could not be deemed a "non holder in possession" because it did not possess the note. Finally, the Bank of New York was not a "non-holder not in possession "because it could not satisfy the requisites of lost, destroyed or stolen instruments or payment or acceptance of the instrument by mistake under N.J.S.A. 12A:3-309 and subsection d. of N.J.S.A. 12A:3-418, respectively.” In my case none of my foreclosure trial judges enforced the NJ UCC Laws A copy of the alleged Note fabricated by Chase and submitted by Bayview was not authenticated and there was no indorsement from AMN to any party (091a). There is no assignment of the Note from AMN to any party.

Deutsche Bank Nat. v. Mitchell, 27 A. 3d 1229 - NJ: Appellate Div. 2011,

“Long Beach was the original holder of the note that Deutsche Bank would like to enforce, and the copy of that note provided by Deutsche Bank is not indorsed. Deutsche Bank has not established that it may enforce the note as a 'holder' as provided by N.J.S.A. 12A:3-301.” The NJ Appellate Division said it loud and clear that lack of indorsement on a Note is a show stopper. In (091a) the alleged copy of the Note, which was used as an attachment to that affidavit of lost Note of

2/12/14 (088a) fabricated by Chase and submitted by Bayview, did not have indorsement from AMN to any entity.

The Subject Matter Jurisdiction of a Court Can be Disputed at Anytime

Arbaugh v. Y H Corp. 546 U.S. 500 (2006) · 126 S. Ct. 1235 Decided Feb 22, 2006: *“The objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12(b)(1), may be raised at any stage in the litigation, even after trial and the entry of judgment, Rule 12(h)(3).”* In the Foreclosure Complaint of 5/12/16 against my house (141a) Bayview did not prove that the Trial Court had subject matter jurisdiction over that complaint.

Nuveen Mun. Trust v. WITHUMSMITH BROWN, 692 F. 3d 283 - Court of Appeals, 3rd Circuit 2012. *“Indeed, a district court has an independent obligation to determine whether subject matter jurisdiction exists, even if its jurisdiction is not challenged. See Arbaugh v. Y & H Corp., 546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006).”* In my foreclosure case, none of the trial judges examined the subject matter jurisdiction of their courts over the Foreclosure Complaint of 5/12/16 filed by Bayview (141a).

On 9/25/23, in the Motion hearing when I disputed Bayview’s legal standing to foreclose, Bayview’s attorney did not respond. He was in default. In 1T, page 4 lines 17-22 and page 5 lines 16-21.

LEGAL POINT IX. THE TRIAL COURT ERRED BY FAILING TO DISMISS THE FORECLOSURE COURT OF 5/12/16.

(Raised Below: paragraph 44 (032a). In 1T page 6 line 4 – page 7 line 8. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

On 5/12/16 Bayview lacked legal standing to file a foreclosure complaint against my house at 23 Twin Terrace Holmdel NJ 07733 (141a). I explained that in the previous Legal Point. The Trial Court lacked subject matter jurisdiction over the Foreclosure Complaint filed by Baview on 5/12/16 since day one. All Court Orders from the Trial Court in this foreclosure court are void including the Order to grant Summary Judgment to Bayview on 3/3/17. Therefore the Foreclosure Complaint of 5/12/16 is void and it must be dismissed (141a).

“A judgment or order issued without subject matter jurisdiction is void, and that defect may be raised at any time and may not be waived. (Lacks v Lacks, 41 N.Y.2d 71, 75.)”

Shammas v. Shammas, 88 A. 2d 204 - NJ: Supreme Court 1952

“The rule simplifies the procedure and permits the exercise of the power to open a final judgment, for the reasons specified in subdivisions (1), (2) and (3), upon motion made within a reasonable time not more than one year after the entry of the final judgment [see, however, as to this time limit, Klapprott v.

U.S., 335 U.S. 601, 69 S.Ct. 384, 93 L.Ed. 266 (1949), remand modified in 336 U.S. 942, 69 S.Ct. 384, 93 L.Ed. 1099 (1949), and Wilford v. Sigmund Eisner Company, 13 N.J. Super. 27 (App. Div. 1951)], and, for the reasons specified in subdivisions (4), (5) (6) and for fraud upon the court, without limitation as to time.” Bayview committed fraud upon the court on 5/12/16 and this rule empowers the judge to dismiss the Foreclosure Complaint (141a).

LEGAL POINT X. THE TRIAL COURT ERRED BY FAILING TO RESTORE MY CONSTITUTIONAL RIGHTS IN THE FORECLOSURE COURT OF MONMOUTH COUNTY NJ.

Raised Below: paragraphs 30-34 028a-029a . In 1T page 6 line 4 – page 7 line 8. Bayview did not oppose and did not deny my claims and arguments. The denial order is at (221a).

For seven long years, four Trial Court Judges ruled over Bayview’s Foreclosure Complaint of 5/12/16 with subject matter jurisdiction. Bayview, Bayview’s attorneys, and the trial judges violated my constitutional rights in every hearing and every order. The NJ Appellate Division has the power and jurisdiction to restore my constitutional rights.

CONCLUSION

I request that this honorable court grants what I requested in Legal Arguments I, II, III, IV, V, VI, VII, VIII, IX, and X.

Also please understand that just like Ford and Torres I paid \$250 filing fee and I expect this court to treat me the way it treated the parties in Wells Fargo v. Ford and Investors Bank v. Torres. Please give me a full UCC Laws analysis. I like to be treated equally.

In compliance with my US 1st and 14th Amendments and NJ R. 1:6-2(f), R. 1:7-4, and . 4:46-2(c) please provide statement of reasons for your orders.

Respectfully Submitted

Reza Farzan

Reza Farzan

2/27/24

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing made by me are willfully false, I am subject to punishment.

Reza Farzan

Reza Farzan

2/27/24

BAYVIEW LOAN SERVICING, LLC

Plaintiff-Respondent.

vs.

**REZA FARZAN; MRS REZA FARZAN,
FICTITIOUS SPOUSE OF REZA
FARZAN; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., AS
NOMINEE FOR AMERICAN
MORTGAGE NETWORK, INC.**

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET No.: A-000789-23

Civil Action

ON APPEAL FROM

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION

HON. DAVID BAUMAN, J.S.C.
SAT BELOW

BRIEF AND APPENDIX OF PLAINTIFF, BAYVIEW LOAN SERVICING, LLC

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Date of Submission: May 10, 2024

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STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY¹

On February 14, 2005, Reza Farzan ("Defendant") executed a note in favor of American Mortgage Network, Inc. in the original principal amount of \$359,650.00. On the same date, Defendant executed a mortgage in favor of Mortgage Electronic Registration Systems, Inc. as Nominee for American Mortgage Network, Inc. This mortgage was recorded on March 5, 2005 in the office of the Monmouth County Clerk in Book OR-8443, Page 1637, et seq. (Pa 1-10)

On or about February 27, 2009, Mortgage Electronic Registration Systems, Inc. as Nominee for American Mortgage Network, Inc. assigned the mortgage to Chase Home Finance, LLC by an assignment of mortgage recorded on March 17, 2009 in the office of the Monmouth County Clerk in Book OR-8762, Page, 1598.(Pa 11-12)

On or about February 28, 2014, JPMorgan Chase Bank, N.A s/b/m Chase Home Finance, LLC assigned the mortgage to Bayview Loan Servicing, LLC ("Plaintiff") by an assignment of mortgage recorded on June 23, 2014 in the office of the Monmouth County Clerk in Book OR-9070, Page 364, et seq. (Pa 13-17)

On or about July 27, 2015, the Defendant entered into a loan modification agreement with Plaintiff.

¹ Since the facts and procedural history of this case are inextricably intertwined, they are combined to avoid repetition and for the court's convenience.

Thereafter, the Defendant defaulted on August 1, 2015 by failing to make his required monthly mortgage payments.

The foreclosure action was initiated by the filing of a foreclosure complaint on May 12, 2016 (Da 141-170). The Defendant filed a contesting answer with counterclaim on August 3, 2016 (Da 171-218) which kicked off years of litigation which sprawled across both the Chancery and Law Divisions of the New Jersey Superior Court as well as the Federal courts including the District of New Jersey, the Third Circuit Court of Appeals, and the United States Bankruptcy Court.

Plaintiff and the Defendant both filed motions for summary judgment which resulted in the trial court granting the Plaintiff's motion for summary judgment on March 3, 2017 and denying the Defendant's cross motion (Pa 18-19).

On February 12, 2018, Appellant filed a motion to Vacate the Summary Judgment. This motion was denied on March 16, 2018.

On March 19, 2019, Defendant filed a motion to dismiss and to allow Defendant to file a complaint against Plaintiff for fraud. This motion was denied on April 26, 2019. (Pa 20)

On May 15, 2019, Defendant filed a motion to force Judge Quinn to recuse himself and to dismiss the foreclosure action. The motion was denied on July 26, 2019. (Pa 21)

On August 20, 2019, Plaintiff filed its Motion for a Final Judgment of Foreclosure. This motion was granted on September 3, 2019. (Pa 22-24)

On February 26, 2022, Defendant filed a motion to (1) vacate the alias writ of execution, (2) have the Office of Foreclosure recuse itself, (3) disqualify Plaintiff's attorney from the case, (4) refund a \$50.00 motion filing fee, (5) order the Office of Foreclosure and Plaintiff to compensate him for pain and suffering, (6) Order the Office of Foreclosure and Plaintiff to pay punitive damages, and (7) request that the court grant other equitable relief. This motion was denied on April 1, 2022. (Pa 25-26)

On March 2, 2022, Defendant filed a motion to (1) stay the sheriff's sale, (2) seek the recusal of Judge Quinn, and (3) grant other equitable relief. This motion was denied on April 1, 2022. (Pa 26)

On January 4, 2023, the Defendant filed a motion seeking to strike the assignment to Chase, vacate the summary judgment order, withdraw the alias writ of execution, and dismiss the foreclosure complaint. This motion was denied on May 12, 2023. (Pa 27-29)

On May 6, 2023, Defendant filed a motion to stay the sheriffs sale and the dismiss the foreclosure complaint. This motion was denied on May 12, 2023. (Pa 33-35)

On September 19, 2023 the Defendant filed an Order to Show Cause to stay the Sheriff's Sale until certain documents were provided by Plaintiff and until certain other issues were resolved (Da 020-140). The court denied the relief sought in the Order to Show Cause in its entirety by Order of September 25, 2023. (Pa 30-32)

This appeal followed when Defendant filed a Notice of Appeal on November 9, 2023 and an Amended Notice of Appeal regarding the denied Order to Show Cause on December 8, 2023 (Da 001-003).

No Sheriff's Sale is currently scheduled.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN DENYING DEFENDANT’S ORDER TO SHOW CAUSE AND THE RELIEF SOUGHT

A review of the Order to Show Cause denied by Judge Bauman on September 25, 2023 (Da 221) shows that the Court was correct in denying the relief sought. More specifically, the Order to Show Cause requested multiple items of relief. The first item was that Plaintiff be compelled to provide a statement under oath to the County Sheriff “on parties of interests of the Note” (sic) pursuant to Chapter 225, Laws of New Jersey 1979.

The second was that Plaintiff must provide an assignment of the Note to the County Sheriff. Third, Defendant sought to stay the Sheriff’s Sale until the foregoing two documents were provided.

Finally, Defendant sought to stay the Sheriff’s Sale until “all five issues on page 7 of the Complaint are resolved”. In fact, these five issues (demands) were not actually in the Complaint but do appear in the Certification Defendant filed in support of the Order to Show Cause that is the subject of this appeal.

These five issues are as follows:

(1) the allegedly forged mortgage Assignment of February 27, 2009, the allegedly forged Assignment of September 28, 2104 and the allegedly forged Affidavit of Lost Note of February 12, 2014;

(2) The allegedly forged HAM Agreement of 2015 and allegedly forged notarial journal;

(3) A statement under oath from Plaintiff regarding the interests of the parties per NJ Law;

(4) An assignment of mortgage and note from Plaintiff to Nationstar per NJSA 46:9-9; and

(5) Pain and suffering and punitive damages for Defendant and his family.

Even a cursory review of Defendant's demands show that these items have either been already considered and rejected or are not required by statutory and/or case law.

More specifically, a Final Judgment of Foreclosure was issued by the Superior Court of New Jersey on September 3, 2019 (Pa 22-24) with respect to the mortgage on Defendant's residence of 23 Twin Terrace, Holmdel, New Jersey. Many of the items Defendant is now demanding in the Order to Show Cause were already litigated and rejected by the court prior to the Superior Court of New Jersey entering the Final Judgment of Foreclosure and should not be reviewed by this court under the principles of res judicata and collateral estoppel as will be discussed more fully below.

POINT II

THE DEMANDS OF DEFENDANT REGARDING MORTGAGE ASSIGNMENTS MUST BE DENIED UNDER THE PRINCIPLES OF RES JUDICATA AND COLLATERAL ESTOPPEL

At the oral argument on the Order to Show Cause that is the subject of this appeal, Judge Baumann noted that Defendant's arguments of forged assignments and forged documents and perjury were considered and rejected not only by his court but by a number of courts in litigation spanning 2016 to the present time. (Transcript p. 13, lines 7-9) Judge Baumann correctly stated that these issues were barred due to well settled preclusive doctrines of res judicata, issue preclusion and the Entire Controversy Doctrine. (Transcript p. 14, lines 10-12)

Res Judicata Bars Plaintiff's Claims relating to issues with the Foreclosure

The doctrine of res judicata bars "relitigation of claims or issues that have already been adjudicated." *Velasquez v. Franz*, 123 N.J. 498, 505 (1991). Res judicata applies when there has been "(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." *Morgan v. Covington Twp.*, 648 F.3d 172, 177 (3d Cir. 2011) (citations omitted).

Res judicata "bars not only claims that were brought in a previous action, but also claims that could have been brought." *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008); see also *Marte v. Deutsche Bank Nat'l Trust Co.*, No. 2:15-0869 (CCC), 2016 U.S. Dist. LEXIS 149173, at *2-*3 (D.N.J. Oct. 26, 2016).

The doctrine of res judicata precludes the claims made by Defendant regarding the allegedly forged assignments and affidavit of lost note. First, Final Judgment has been entered in the Foreclosure Action. Second, both Defendant and Plaintiff were parties to the Foreclosure Action. Third, Defendant's denied claims all stem from the Foreclosure Action and were adjudicated by the state courts prior to the entry of judgment.

Accordingly, the doctrine of res judicata bars re-litigation of Defendant's claims, and the Court was correct in denying the relief sought by Defendant in the Order to Show Cause.

Additionally, the allegations regarding allegedly forged assignments and affidavit of lost note are also barred by the doctrine of collateral estoppel.

The doctrine of collateral estoppel operates to preclude the relitigation of issues that have been previously decided. *Olivieri v. Y.M.F. Carpet, Inc.*, 186 N.J. 511, 522 (2006). For the doctrine to apply, the party asserting the bar must show: (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the

earlier proceeding. Id. at 521 (quoting *In Re Estate of Dawson*, 136 N.J. 1, 20-21 (1994)).

This doctrine applies not only to issues raised in a prior action, but also to facts that were in dispute as well. Id. at 522.

Based upon the foregoing, all elements of collateral estoppel have been satisfied here. First, the issue as to the allegedly forged assignments and allegedly forged Affidavit of Lost Note was raised, considered and rejected by the state court prior to entering judgment. Second, this issue was actually litigated below as can be seen from the fact that Plaintiff obtained an Order for Summary Judgment which struck Defendant's Answer, Counterclaim and Separate Defenses (Pa 18-19). Third, a Final Judgment of Foreclosure was entered by the Superior Court of New Jersey on September 3, 2019 (Pa 22-24). Fourth, the court would not have entered the Final Judgment of Foreclosure if there was any concern about the assignments being genuine. Finally, both Defendant and Plaintiff were parties to the earlier foreclosure. As a result, all elements of collateral estoppel are present, the doctrine of collateral estoppel applies and Judge Bauman's denial of the Order to Show Cause should be affirmed by this court denying the appeal in its entirety. (Pa 30-32)

POINT III

THE COURT DID NOT ERR BY DENYING DEFENDANT’S DEMAND TO COMPEL PLAINTIFF TO PRODUCE A STATEMENT PER NJ CHAPTER 225 LAW.

One of the items of relief sought by Defendant in the Order to Show Cause was a statement of the interest of parties pursuant to Chapter 225 of the Laws of NJ 1979. This law requires a statement to be provided to the Sheriff prior to the sale of any real property listing the names of all mortgagees and other holders of encumbrances constituting “consideration” as defined in the Act. Since there is no Sheriff’s Sale of the Defendant’s residence scheduled due to the various stays (bankruptcy and otherwise) that have been placed upon the sale, the statement is not yet required. Accordingly, Defendant’s claim that a statement has not been provided is not ripe and the trial court was correct to dismiss this demand which should be affirmed by this court.

POINT IV

THE COURT DID NOT ERR BY DENYING DEFENDANT'S DEMAND TO COMPEL PLAINTIFF TO PRODUCE AN ASSIGNMENT.

Another item of relief sought by Defendant in his Order to Show Cause was a demand for the production of an assignment from Plaintiff to Nationstar, however, that assignment did not occur until after the Judgment of Foreclosure was entered. At the time the Judgment of Foreclosure was entered, Defendant's mortgage merged into the judgment and ceased to exist. *In Re Goione*, 595 B.R. 477 (Bankr. D.N.J. 2019).

Thus, there was no longer a mortgage to be assigned and no need for an assignment to be recorded.

Moreover, it is well settled that a mortgagor cannot challenge the assignment of a note and mortgage. See *US Bank Nat. Assn v. Riley*, 2016 WL 2888952 (N.J. Superior Ct. App. Div. May 18, 2016). Since Defendant was not a party to the assignment, he had no basis or standing to challenge that assignment. See *Nationstar Mortgage v. Guenzel*, 2018 WL 4688271 (N.J. Superior Ct. App. Div. October 1, 2018). Accordingly, the trial court did not err in denying Defendant's request for this relief and the denial should be affirmed by this court.

POINT V

A JUDGE HAS BROAD DISCRETION TO MANAGE HIS COURTROOM

In points I and II of his brief, Defendant raises issues concerning the court's management of his case. Point I concerns Defendant's preference to have had the motion hearing in person rather than by Zoom and Point II concerns his Complaint that Plaintiff should not have been allowed to orally argue the Order to Show Cause.

It is submitted that both of these are determined at the discretion of the court which at all times was reasonable and was not abused.

With respect to the demand that the motion be argued in person, reference must be made to the NJ Supreme Court's October 27, 2022 Order as to the future of court operations paragraph 4(a), which provides that going forward routine motions should be handled virtually in all trial divisions of the Superior Court. Since the Order to Show Cause is analogous to a motion, the court did not abuse its discretion in handling it virtually.

With respect to allowing Plaintiff to proceed with oral argument on the Order to Show Cause, the court still retains discretion whether to allow oral argument under NJ Court Rule 1:6-2(a) and even if the court should not have allowed oral argument by Plaintiff's counsel, which is not conceded, it was harmless error and did not result in any prejudice to Defendant. In that respect, it

must be noted that in the court's decision denying the Order to Show Cause, it did not reference anything that Plaintiff's counsel stated during oral argument proving that the oral argument had no effect on the court's decision and confirmed that Defendant was not prejudiced by Plaintiff's oral argument.

POINT VI

THE SUPERIOR COURT HAD SUBJECT MATTER JURISDICTION OVER THE SUBJECT FORECLOSURE COMPLAINT

Point VIII of Defendant's brief claims that the trial court failed to acknowledge that it lacked subject matter jurisdiction by proceeding with the foreclosure Complaint. The brief then proceeds to list a number of alleged infirmities which Defendant believes divests the court of subject matter jurisdiction which is erroneous. Those supposed jurisdictional defects include a lack of authentication of mortgage assignments, statute of limitations, no injury in fact and violation of NJ UCC laws, however, this is a misstatement of law.

In fact, in a mortgage foreclosure matter which is a quasi in rem action, it must be instituted in the state where the land is situated, in the Chancery Division of the Superior Court of New Jersey and in the county where the mortgaged land is situated. Thus, the Chancery Division will have in rem jurisdiction of the property within New Jersey and subject to the court's control. *Mortgage Electronic Registration Systems, Inc. v. Powell*, 2007 WL 3376639 (N.J. Superior Ct., App. Div. November 15, 2007).

Here, the foreclosure Complaint was instituted in Monmouth County where the mortgaged property is located which is sufficient to establish subject matter jurisdiction and Defendant's argument to the contrary is without merit. As such,

this court should affirm the trial court's decision and deny the relief sought in the Order to Show Cause.

POINT VII

THE TRIAL COURT DID NOT ERR BY NOT DISMISSING THE FORECLOSURE COMPLAINT

In Point VIII of his brief, Defendant erroneously argues that the Superior Court of New Jersey did not have subject matter jurisdiction to enter a Judgment of Foreclosure and that all of its orders are void. For the reasons stated in Point VI, supra, Defendant's position is incorrect as the court clearly had subject matter jurisdiction of the present matter. As a result, this court should affirm the trial court's denial of the relief sought in Defendant's Order to Show Cause.

POINT VIII

THE FORECLOSURE OF DEFENDANT’S MORTGAGE DID NOT VIOLATE HIS CONSTITUTIONAL RIGHTS

In Point X of his brief, Defendant alleges that Plaintiff, its attorneys and the trial judges violated his constitutional rights “in every hearing and every order.” However, this point does not contain any specifics other than to relate it to a comment that “For seven long years, four trial court judges ruled over Plaintiff’s foreclosure Complaint of May 12, 2016 with subject matter jurisdiction.” As discussed in Point VI, supra, the court did in fact have subject matter jurisdiction over the foreclosure complaint for the reasons stated and Defendant’s allegation that he has been deprived of his constitutional rights in connection with the prosecution of the foreclosure is without merit. For these reasons, this court should affirm the ruling of the trial court in denying Defendant the relief sought in his Order to Show Cause.

CONCLUSION

For all the foregoing reasons, the trial court's denial of the relief sought in Defendant's Order to Show Cause should be affirmed by this Court.

FEIN, SUCH, KAHN & SHEPARD, P.C.
Attorneys for Plaintiff,
Bayview Loan Servicing, LLC

By: /s/ Gregg P. Tabakin
Gregg P. Tabakin, Esq.

Dated: May 10, 2024

BAYVIEW LOAN SERVICING LLC

Plaintiff-Respondent

V.

REZA FARZAN; MRS REZA FARZAN, FICTICIOUS SPOUSE OF REZA FARZAN; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., AS NOMINEE FOR AMERICAN MORTGAGE NETWORK, INC.

Defendant -Appellant

SUPERIOR COURT OF NJ

APPELLATE DIVISION

APPELLATE #: A-000789-23

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT OF NJ

CHANCERY DIVISION:

FORECLOSURE COURT

Docket No. F-013470-16

HON. DAVID BAUMAN

SAT BELOW

**REVISED REPLY BRIEF FROM
DEFENDANT-APPELLANT REZA FARZAN**

JUNE 10, 2024

Reza Farzan

Defendant-Appellant

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Holmdel NJ 07733

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NJ UCC LAWS CODIFIED AS NJ STATUTES

FTCPA

FTCPA REGULATION F

Dodd-Frank Wall Street Reform and Consumer Protection Act

12 C.P.R. § 1006.26.

PRELIMINARY STATEMENT

My name is Reza Farzan, I am the Pro Se Defendant-Appellant in this case. I have personal knowledge about this case and I am making this Revised Reply Brief in response to the Plaintiff-Respondent Brief dated 5/10/24. In Brief I'll use the exhibit numbers of Volume I of the Opening Brief filed on 2/27/24.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I combined statement of facts and procedural history because they are intertwined and if I separate them it needs more space that I cannot afford.

On 2/14/2005 I signed a Promissory Note and gave it to my original lender and servicer: American Mortgage Network Inc. (AMN) in exchange for a loan to by my house. AMN went out of business by 12/31/2005 and Chase Home Finance (Chase) took over the servicing of the mortgage without any authorization from AMN. Chase did not let me know that AMN was out of business after 12/31/2005. I made monthly mortgage payments to Chase until Sep 2008. Chase did not pay AMN for its share of the payment because AMN did not exist. Since chase was not authorized by any one to be my servicer, on 2/27/2009 Chase forged a mortgage assignment from Mortgage Electronic Systems Inc. (MERS) to Chase. The first Foreclosure Complaint against my

house (F-12718-09) was filed by Nicholas J. Canova from Fein, Such, Kahn, and Shaepard PC (FSKS) on behalf of Chase on 3/10/2009. FSKS represents Bayview in this instant appeal. On paragraph 1 of that Complaint I read: ***“On February 14, 2005, REZA FARZAN, executed to AMERICAN NETWORK INC., a Note in the sum of \$359,650.00 payable on March 1, 2035, with interest at the rate of 5.750% per annum, payable by payments of \$1,723.32 per month for interest and principal.”*** on paragraph 3, Chase pleaded that ***“Said mortgage was assigned by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., AS NOMINEE FOR AMERICAN NETWORK INC., to CHASE HOME FINANCE LLC, Plaintiff herein, by assignment dated February 27, 2009, assignment to be recorded.”*** Chase filed that Complaint without that alleged mortgage assignment which was illegal in NJ. Also in the last line of paragraph 8 in that complaint, Attorney Canova pleaded on behalf of Chase: ***“The date of default is October 1, 2008”***.

On 12/20/2010 Hon. Glenn Grant from the NJ Administrative Of the Courts (NJ AOC) ordered that mortgage assignment of 2/27/2009 was fraudulent and to be removed from the first Foreclosure Complaint and suspended that Complaint of 3/10/2009.

In my Opening Brief I proved that Respondent, Bayview Loan Servicing LLC (Bayview), was a total stranger to my Note (091) and allegedly purchased a defaulted debt from Chase in a fire sale on 2/28/14. Chase helped Bayview, a debt collector, to disguise as a mortgage lender and servicer to file a Foreclosure Complaint (F-013470-16) against my house at 23 Twin Terrace Holmdel NJ 07733, on 5/12/16 (141). That Complaint was based on four forged mortgage documents: the Mortgage Assignment of 2/27/2009 from MERS to Chase (065) , the Affidavit of Lost Note of 2/12/14 fabricated by Chase (088a), the Mortgage Assignment of 2/28/14 (097) from Chase to Bayview, and the HAM Agreement of 2015 forged by Bayview and Samantha Dickie.

The alleged copy of the alleged Note (dated 2/14/2005) was already time barred when it was submitted to the Foreclosure Court of Monmouth County on 12/30/16. None of the submitted mortgage documents in the Complaint of 5/12/16 was authenticated by Certification of Acknowledgement in violation of NJSA 2A:82-17. None of the mortgage assignments submitted by Bayview was authenticated by affidavits or certifications of personal knowledge in violation of the Supreme Court of NJ Order based on Rule 1:6-6. The original lender and servicer was AMN. AMN did not indorse the Note to any party. AMN did not assign the Note to any party. All trial judges: Patricia Cleary, Katie Gummer, Joseph Quinn, and David Bauman refused to examine the documents submitted

by Bayview. None of them enforced the NJ UCC Laws in my case. Bayview's attorneys used their white privileges to win in the Foreclosure Court.

My name and home address was on page 400 of the Group 3 List (087a) and the NJ Office of Foreclosure (NJ OOF) was not supposed to admit the fraudulent mortgage assignment of 2/27/2009 and send it to the Monmouth County Superior Court. The Foreclosure Trial Court lacked subject Matter Jurisdiction over the Complaint of 5/12/16, but they proceeded with that anyway.

The County Sheriff refused to enforce the NJ Chapter 225 Law to get a statement under oath from Bayview on the parties of interests to the Note.

The trial court failed to enforce the NJ UCC Laws, NJSA 12A:3-118(d), NJSA 12A:3-203, and NJSA 12A:3-309.

Around 6/22/22 Bayview sold the alleged debt to another debt collector: Nationstar Mortgage LLC (Nationstar). Since Bayview and Nationstar claimed that they were mortgage lenders and servicers, Bayview was supposed to provide an assignment of the Note per NJSA 46:9-9. But it failed to do so. On 12/15/23 Nationstar sold the alleged debt to US Bank National Trust (US Bank) and Shellpoint Mortgage Servicing (Shellpoint).

LEGAL ARGUMENT

LEGAL POINT A: THE TRIAL JUDGES GROSSLY ABUSED THEIR DISCRETION

I downloaded a copy of NJ Standards for Appellate Review by Ellen T. Wry

and Christina Oldenburg Hall; August 2022 Revision from njcourts.gov.

On the 2nd paragraph of page 28 of that document I read: *“Trial judges are afforded wide discretion in deciding many of the issues that arise in civil and criminal cases (see examples below). Appellate courts review those decisions for an abuse of discretion. A court abuses its discretion when its ‘decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.’”* State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)). *“[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue.”* State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). *“When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was ‘manifestly unjust’ under the circumstances.”* Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 App. Div. 2007)).”

In the 3rd paragraph of page 30 I read: *“1. In both civil and criminal cases, the appellate court reviews a trial judge's discovery rulings under the abuse of discretion standard. State v. Brown, 236 N.J. 497, 521 (2019);”* In my

foreclosure case on 1/6/17 Judge Cleary ordered the discovery to go on until 2/28/17. But Bayview abruptly stopped the discovery right after that hearing and Judge Cleary agreed with that without completing the discovery. She abused her discretion. Also in the same hearing of 1/6/17 Judge Cleary stated that the unauthenticated mortgage documents recorded in the Hall of Records had nothing to do with my foreclosure case; but on 3/3/17 she admitted them as evidence against my property..

On the sub-paragraph on the 4th paragraph on page 4I read: **"a. Civil cases** **"The admission or exclusion of expert testimony is committed to the sound discretion of the trial court."** *Townsend v. Pierre, 221 N.J. 36, 52 (2015).* *An appellate court "must apply an abuse of discretion standard to a trial court's determination, after a full Rule 104 hearing, to exclude expert testimony on unreliability grounds."* *In re Accutane Litig., 234 N.J. 340, 391 (2018).* On 3/3/17 in the Summary Judgment motion hearing Judge Cleary did not admit the affidavit of my expert witness, Marilyn English, and did not allow her to testify. On 4/1/22 in the motion hearing to certify the final judgment, Judge Joseph Quinn did not admit the affidavit of my expert witness, Joseph Esquivel; and did not allow him to testify. A judge is not a mortgage expert, to provide an expert opinion.

**LEGAL POINT B: BAYVIEW FAILED THE REQUIREMENTS OF
THE NJ UCC LAWS**

Bayview in its response of 5/10/24 admitted that Bayview had no connection to the Note of 2/14/2005. The NJ UCC Laws which governs the enforcement of a residential mortgage Note is all about the Note. There was no indorsement of my Note to any party and there was no assignment of my Note to any party. So NJ UCC Laws does not apply to Bayview and Bayview was never a secured creditor on my property. Also Bayview did not dispute the fact that I defaulted on my monthly mortgage payments with Chase in Sep 2008 as pleaded by Chase in its Foreclosure Complaint of 3/10/09. Bayview did not dispute that it purchased the alleged debt from Chase in a fire sale on 2/28/14. Conclusively the governing law to cover Bayview's practices is Fair Debt Collection Practices Act (FDCPA). Bayview was a debt collector but on 5/12/16 it filed a Foreclosure Complaint in the NJ OOF as a mortgage lender and servicer based on a forged mortgage assignment and a time barred Note. Bayview and its law firm FSKS committed fraud upon the trial court and on this Appellate Court and upon me and my family for 8 long years. Responding to Bayview's legal point is moot now and waste of time and space.

Chase and Bayview emailed mortgage documents to the County Hall of Record and the County Clerk did not make sure that the emailed documents were the

true copies of the original in violation of NJSA 2A:82-17.

Deutsche Bank Nat. v. Mitchell, 27 A. 3d 1229 - NJ: Appellate Div. 2011

“We held that the trial court should not have considered an assignment that was not "authenticated by an affidavit or certification based on personal knowledge.” The assignments of 2/27/2009 and 2/28/2014 in my case were not authenticated by affidavits or certifications of personal knowledge but judge Cleary blamed it on the County Clerk and the county clerk said she did not examine the recorded documents and the other judges upheld Retired Judge Cleary’s invalid and erroneous Orders. By NJ laws an assignment needs an authentication based NJ R. 1:6-6.

Deutsche Bank Nat. v. Mitchell, 27 A. 3d 1229 - NJ: Appellate Div. 2011

“Long Beach was the original holder of the note that Deutsche Bank would like to enforce, and the copy of that note provided by Deutsche Bank is not indorsed. Deutsche Bank has not established that it may enforce the note as a 'holder' as provided by N.J.S.A. 12A:3-301.” The NJ Appellate Division said it loud and clear that lack of indorsement on a Note is a show stopper. The unauthenticated copy of the alleged Note provided by Bayview, did not have indorsement from AMN to any party. There is no assignment of the Note to any party. So Bayview was not the holder of the Note. That is the UCC Law.

On 12/20/2010 Judge Grant ordered that the mortgage assignment of 2/27/2009

was fraudulent. On 2/28/14 made an assignment to assign the servicing right to Bayview, so the assignment of 2014 was based the assignment of 2009. Therefore the assignment of 2/28/14 is fraudulent. By NJSA 12:2-203(b) the assignment of 2/28/14 is void.

Bayview pleaded that it was never in possession of the alleged Note, Chase was. On 2/12/14 Chase made the Affidavit of Lost Note. Chase, without proof , pleaded that it was in possession of the Note and lost it. Therefore Bayview was never in possession of the Note. According to NJSA 12A:3-309 Bayview does not have legal standing to enforce the Note.

The date on the unauthenticated copy of the alleged Note is 2/14/2005. According to NJSA 12A:3-118(d) the alleged Note was time barred on 2/14/2015. Bayview filed for foreclosure based on a time barred Note.

Consequently Bayvies did not have legal standing to file to foreclose my house on 5/12/2016.

**LEGAL POINT C: BAYVIEW HAS BEEN A DEBT COLLECTOR
DISGUISED AS A MORTGAGE LENDER AND SERVICER TO
EXTORT HUGE PROFIT**

In the first Foreclosure Complaint of 3/10/2009 Attorney Canova from FSKS pleaded that the original lender and servicer was AMN and the date of the Note was 2/14/2005. He also pleaded that the Assignment of 2/27/2009 was an assignment of mortgage only. Then he pleaded that I defaulted on my monthly

mortgage payment with Chase on 10/1/2008. Then Bayview filed the second Foreclosure Complaint on 5/12/16. Based on the following case laws Bayview was a debt collector by FDCPA definition.

Singletary v. NATIONSTAR MORTGAGE, LLC, Dist. Court, D. Maryland 2016. *“The FDCPA is violated when (1) the plaintiff has been the object of collection activity arising from consumer debt, (2) the defendant is a debt collector under the FDCPA, and (3) the defendant has engaged in an act or omission in violation of the FDCPA”.* Stewart v. Bierman, 859 F. Supp. 2d 754, 759 (D. Md. 2012). *“A “debt collector” is “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). Although a mortgage servicer is not generally considered a “debt collector,” a mortgage servicer does qualify as a debt collector when it attempts to collect a debt that was in default at the time the servicer acquired it. Id. § 1692a(6)(F)(iii)”;* Schlosser v. Fairbanks Capital Corp., 323 F.3d 534, 536-39 (7th Cir. 2003); Allen v. Bank of America Corp., No. CCB-11-33, 2011 WL 3654451, at *7 n.9 (D. Md. Aug. 18, 2011). *“Nationstar took over servicing the Singletarys' loan on July 1, 2012. The foreclosure action against the Property*

was initiated on June 10, 2011. Since default is a precondition for foreclosure, the record suggests that Nationstar began servicing the Singletarys' loan after it had fallen into default. Consequently, the Court will consider whether the Singletarys have alleged that Nationstar engaged in activities prohibited by the FDCPA. It is a violation of the FDCPA for a debt collector to "communicate with a consumer in connection with the collection of any debt . . . at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication." 15 U.S.C. § 1692c(a)(3). In addition, "a debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." Id. § 1692d. Such prohibited conduct includes "[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." Id. § 1692d(5). In determining whether a debt collector's phone calls constitute actionable harassment, a court considers the volume and pattern of the calls and whether they continued after the plaintiff asked the debt collector to stop." Akalwadi v. Risk Mgmt. Alternatives, Inc., 336 F. Supp. 2d 492, 505 (D. Md. 2004); Lipscomb v. Aargon Agency, Inc., No. PWG-13-2751, 2014 WL

5782040, at *3 (D. Md. Nov. 5, 2014). This US District Judge in Maryland in 2016 explained to Nationstar that they could not start servicing a mortgage on a defaulted loan. My loan was defaulted in Sep of 2008, certainly after filing the first Foreclosure Complaint of 3/10/09 the loan was in default. In 2016 Bayview, who pleads to be a debt collector in its literatures, claimed that it started servicing that defaulted loan in 2015. Bayview sold the alleged debt to another self claimed debt collector: Nationstar, on 6/30/22. Nationstar claimed that it started servicing that defaulted loan since purchase. On 12/15/23 Nationstar sold the alleged debt to US Bank and Shellpoint. Shellpoint allegedly started servicing the defaulted loan in December of 2023. They are all alleged debt collectors disguised as mortgage lenders and servicers. They try to collect the full amount of the time barred Note plus interests plus attorney fees while they paid a penny or two per dollar for the alleged debt.

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which created the CFPB and granted it authority to promulgate rules under the FDCPA as well as to enforce compliance with the Act's requirements. Pub. L. No. 111-203, § 1089, 124 Stat. 1376, 1964,2093 (codified at 12 U.S.C. § 5491(a) and 15 U.S.C. § 1692l(b)(6), (d)). Pursuant to that authority, in 2021, the Bureau amended Regulation F, which implements the FDCPA, to prescribe rules governing the activities of debt collectors, as that

term is defined in the Act. 86 Fed. Reg. 5766 (Jan. 19, 2021). Among other things, the regulation prohibits debt collectors from bringing or threatening to bring a legal action against a consumer to collect a time-barred debt. 12 C.P.R. § 1006.26. *This provision adopts a strict liability standard-that is, it prohibits debt collectors from pursuing legal action on time-barred debt regardless of whether they know or should know that the action is time-barred. See 86 Fed. Reg. at 5781. In explaining this standard, the CFPB reasoned that imposing a "knows-or-should-know standard" would be inconsistent with Section 1692e, "which does not include an exception or exclusion for debt collectors whose deceptive statements are unintentional."* Bayview, Nationstar, US Bank and Shellpoint were warned repeatedly that my Note was time barred on 2/14/15.

Johnson v. Midland Funding, LLC, 823 F.3d 1334 (11th Cir. 2016). The US Supreme Court, like the US Congress, was fully aware of abusive practices by debt collectors against US consumers. It is up to the consumers and attorneys and judges to get the laws enforced. *"The 11th Circuit reversed the decision and determined that Midland's conduct in filing the proof of claim on clearly time-barred debt violated the FDCPA."*

"Because creditors themselves have given up trying to collect the debts they sell to debt buyers, they sell those debts for pennies on the dollar. Id., at 23. The older the debt, the greater the discount: While debt buyers pay close to

eight cents per dollar for debts under three years old, they pay as little as two cents per dollar for debts greater than six years old, and "effectively nothing" for debts greater than 15 years old. Id., at 23-24. These prices reflect the basic fact that older debts are harder to collect. As time passes, consumers move or forget that they owe the debts; creditors have more trouble documenting the debts and proving their validity; and debts begin to fall within state statutes of limitations — time limits that "operate to bar a plaintiff's suit" once passed. The US Supreme Court in this case law did a great job in helping the consumers. According to the formula when Bayview purchased the alleged debt from Chase in 2014, the defaulted loan was nine years old and it worth less than two pennies. When Nationstar purchased the alleged debt from Bayview in 2022, it was 17 years old and it worth “practically nothing. And they shamelessly tried to take my house for it.

Allen v. LaSalle Bank, NA, 629 F. 3d 364 - Court of Appeals, 3rd Circuit 2011.

“Attorneys, such as FSKS, are regarded as debt collectors, and their conduct as such is regulated by the FDCPA.” See Heintz v. Jenkins, 514 U.S. 291, 292, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995) (“the term ‘debt collector’ ... applies to [attorneys] who ‘regularly,’ through litigation, tr[y] to collect consumer debts”). “The Act entitles consumers to certain information regarding the nature of their debts, § 1692g, and prohibits debt collectors from engaging in

certain conduct, see §§ 1692c-1692f, 1692j-1692k. The FDCPA is a remedial statute, and we construe its language broadly so as to effect its purposes. Brown v. Card Serv. Ctr., 464 F.3d 450, 453 (3d Cir.2006). Section 1692e proscribes "any false, deceptive or misleading representation," (emphasis added), and § 1692d similarly condemns "any conduct the natural consequence of which is to harass, oppress, or abuse any person," (emphasis added)." Bayview, Nationstar, US Bank and Shellpoint are all debt collectors disguised as lenders and servicers. Their attorneys are debt collectors as well. Even in this appeal FSKS, who is a debt collector, misinformed this court about the nature of the alleged debt and tried to cover up Bayview's fraud. Bayview and FSKS conducts harassed me and my family, oppressed me and my family, and abused me and my family.

CONCLUSION

I request that this court denies Bayview's requests filed on 5/10/24 in its entirety.

I request that this honorable court grants what I requested in my Opening Brief.

Reza Farzan

Reza Farzan

6/10/24

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing made by me are willfully false, I am subject to punishment.

Reza Farzan

Reza Farzan

6/10/24