SUPREME COURT OF FLORIDA

JOSEPH T. BUSET,

Petitioner,

v.

HSBC BANK USA, NATIONAL ASSOCIATION, etc.,

Respondent.
_____/

Case No. SC18-1099
LT No. 3D16-1383; 12-38811

PETITION FOR REINSTATEMENT OF APPEAL AND/OR PETITION FOR WRIT OF QUO WARRANTO

Petitioner, Joseph T. Buset, hereby files this petition for reinstatement of appeal and/or Petition for a Writ of Quo Warranto, and states:

On July 20, 2018, this Court entered an order dismissing this appeal and granting 15 days to request reinstatement. Respectfully, if the Court does not accept the explanation set forth in Petitioner's response to Respondent's Motion to Dismiss the appeal as untimely, the Court should still accept jurisdiction to consider this case as a Writ of Quo Warranto against the Third DCA for which there is no deadline.

This Court has explained "it is clear that the Florida Constitution authorizes this Court as well as the district and circuit courts to issue writs of quo warranto. See art. V, §§ 3(b)(8), 4(b)(3) and 5(b), Fla. Const. The term 'quo warranto' means 'by what authority,' and the writ is the proper means for inquiring into whether a particular individual has improperly exercised a power or right derived from the

State. *See Fla. House of Reps. v. Crist*, 999 So.2d 601, 607 (Fla.2008); *Martinez*, 545 So.2d at 1339. This Court 'may' issue a writ of quo warranto which renders this Court's exercise of jurisdiction discretionary. Art. V, § 3(b)(8), Fla. Const. Furthermore, the Court is limited to issuing writs of quo warranto only to 'state officers and state agencies.' *Whiley v. Scott*, 79 So. 3d 702, 707 (Fla. 2011).

This Writ is necessary because the Third District Court of Appeals has acted illegally in this case, and is continuing to act illegally in foreclosure appeals. The Third DCA is abusing appellate procedure to prevent review of its unlawful decisions that ignore serious, systemic misconduct in mortgage foreclosures. The Third DCA turned a blind eye to fraud on the court, discovery misconduct, perjury, defiance of court orders, destruction of evidence in violation of a court ordered subpoena, witnesses trained to commit perjury, due process violations, its own bias in favor of banks over homeowners, and its opinions that conflict with other DCA's and long-standing precedent of this Court, all to reach a desired result – foreclosure.

I. It is Illegal for the Third DCA to Deny Motions for Disqualification that Cite Many Objective Reasons to Question its Impartiality

The Third DCA has repeatedly refused to disqualify itself, even though its bias in foreclosures is patently obvious. One of many objective reasons to question the impartiality of the Third DCA is a recent front page Daily Business Review article entitled, Can He Say That? Frustrated Attorney Asks 'What's Wrong with the Third DCA, on February 12, 2018. See attached as Appendix A. The article reported

"***there is no question that the Third District is pro-business and couldn't care less about homeowners***." (emphasis added).

This front-page article further reported that the Third DCA "abuses per curiam affirmances, or PCAs, to avoid explaining their rulings on lender standing, … [and] misuses the tool to strategically sidestep writing opinions that could provide grounds for rehearing. Instead, they say it uses the decisions to wipe out options for further review and avoid conflicts with other district courts." Instead of a reasoned opinion that would create conflict jurisdiction for this Court, the Third DCA issues a PCA that says: you lose because we said so.

Moreover, the article then laid out statistical, empirical evidence that this Honorable Court reversed on standing in favor of the banks 87% of the time, while over the same time period, the 1st, 2nd, 4th and 5th DCA's all reversed on standing in favor of the homeowners between 73%-84% of the time. This is not just an anomaly. The front page article attached a press release that set forth:

> … of its sixteen written opinions addressing standing in recent-era foreclosure cases, the Third District has only ruled for a property owner twice. *66 Team, LLC v. JPMorgan Chase Bank Nat. Ass'n,* 187 So. 3d 929 (Fla. 3rd DCA 2016) and *Riocabo v. Fed. Nat'l Mortgage Ass'n*, 230 So. 3d 579 (Fla. 3rd DCA 2017). (Consider that in 66 Team, the bank did not admit any documents or evidence at trial to prove its case. And in *Riocabo*, the bank confessed error - admitting that it must lose on appeal.)… The neighboring Fourth District has issued 120 written foreclosure opinions on standing, 87 (73%) have been in favor of property owners. On this same issue, the Second District has issued 43 written opinions, 36 (84%) have been for property owners; the First District has ruled for owners 83% of the time; and the Fifth District has

> found for owners 72% of the time.... But, the Third District has ruled for a property owner only twice (13%). It's also noteworthy that the Third has only issued sixteen written foreclosure opinions on standing – the fewest of any appellate court in the state. There is apparently no justifiable way to explain this.

Petitioner has now filed three Motions to Disqualify the Third DCA citing this article and Canon 3 E(1) of the Code of Judicial Conduct which mandates that "a judge ***shall*** disqualify himself or herself in a proceeding in which the judge's impartiality ***might*** reasonably be questioned..."(emphasis added). The first in this case, and two more right after the Third DCA ignored that Canon of Judicial Conduct, unanimously denied that first Motion to Disqualify, and denied Rehearing En Banc in cases involving fraud, perjury and defiance of court orders.

This Court instructs, "it is the duty of Courts to scrupulously guard [the right to a fair and impartial judiciary] and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice." *Crosby v. State*, 97 So. 2d 181, 184 (Fla. 1957). This Court recognized that "prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose

neutrality is shadowed or even questioned." *Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983). In *Livingston*, this Court instructed:

> it is a matter of no concern what judge presides in a particular cause, but it is a matter of grave concern that justice be administered with dispatch, without fear or favor or the suspicion of such attributes. The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel, and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy. The judiciary cannot be too circumspect, neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of litigants in a fair and impartial adjudication of the issues raised. Id.

The rules regarding judicial disqualification "were established to ensure public confidence in the integrity of the judicial system...." *Livingston* at 1086; *Goines v. State*, 708 So. 2d 656, 661 (Fla. 4th DCA 1998)(noting that the public acceptance of judicial decision-making turns on popular trust in judges as neutral magistrates; judicial system fails to present plausible basis for respect when judge's impartiality can reasonably be questioned).

It is clearly necessary to revisit the standard enunciated by this Court that "each justice must determine for himself both the legal sufficiency of a request seeking his disqualification and the propriety of withdrawing in any particular circumstances." *In re Carlton*, 378 So.2d 1212, 1216 (Fla.1979) (On Request for Disqualification). The Third DCA has abused the PCA, refused to certify conflict, refused to write opinions and now refused to disqualify itself in foreclosures. It is evident the Third DCA cannot be entrusted to police itself from abusing the law.

A. Two Recent Examples of PCA Abuse that are Objective Reasons to Question the Impartiality of the Third DCA

To emphasize its brazen abuse of appellate procedure, just two days after denying the first Motion to Disqualify in this case that said the Third DCA abuses the PCA, the Third DCA issued two more PCA's. In both of those cases, Bank of America had fabricated false assignments and backdated endorsements in an unconscionable scheme to prove standing that included multiple acts of perjury by the most senior Bank of America executives. The PCA's were clearly issued to shut down further review of obviously illegal misconduct. The Third DCA should be disqualified if it will not fairly address misconduct and evidence of unclean hands.

In 2010, the Federal Bureau of Investigation ("FBI") investigated Banks for creating "millions of false and fictitious assignments of mortgages that were used to support foreclosure actions across the United States… caus[ing] the judicial process as it relates to foreclosures to be corrupted with false and fraudulent filings." The FBI concluded "this matter has the potential to be a top ten Corporate Fraud case." See FBI Memos attached as Appendix B and C.

In 2015, undersigned counsel sued Bank of America under the False Claims Act in Federal Court. The U.S. Department of Justice declined to intervene, finding that if Bank of America and others violated the National Mortgage Settlement by continuing to use false evidence in foreclosures, it was now a matter for the state courts to handle themselves. *U.S. ex rel. Bruce Jacobs v. Bank of America Corp., et.*

al., U.S. Dist. Ct. Case No. 1:15-cv-24585-UU. However, U.S. District Court Judge Ursula Ungaro allowed undersigned counsel to sue on behalf of the government and found that "[u]sing rubberstamped endorsements on promissory notes or relying on MERS transfers to foreclose on properties or obtain orders of sales falls within the scope of actions barred by the [$25 Billion National Mortgage Settlement]." See Omnibus Order, pg. 19 attached as Appendix B.

As part of that unconscionable scheme to make false claims, Bank of America defied many court orders of state court judges and even defied a court ordered subpoena by ordering the destruction of 1.88 billion objects of data, metadata, and encryption keys in a military grade purge of evidence. The Third DCA knows this egregious misconduct violates the $25 Billion National Mortgage Settlement. It is illegal, constitutionally improper, and not lawfully affirmed by a PCA.

If the federal government will not vindicate the integrity of the courts, it's up to the courts to vindicate themselves. Several judges have allowed undersigned counsel to prosecute counterclaims alleging this egregious misconduct is a violation of Florida's Racketeering Influenced and Corrupt Organizations ("RICO") Act. There is a growing conflict between judges sworn to defend the integrity of the judiciary and others sworn to protect Bank of America's profit stream and a foreclosure process founded on fraudulent evidence, perjury, defiance of court orders, false legal arguments, and biased judges who refuse to admit their partiality.

In one of the PCA's, *Bank of America v. Jose Rodriguez,* one trial judge entered two orders that sanctioned Bank of America and its counsel under the Inequitable Conduct Doctrine for "outrageous" and "bad faith" discovery tactics to cover up its RICO misconduct. In response, Bank of America defiantly moved to disqualify that trial judge and appealed his order, attacking that trial judge as unethical, biased, and arguing his well-reasoned discovery order was a departure from the essential elements of law. That trial judge then rotated out of division.

Bank of America's counsel quickly threw a fundraiser for the successor judge who promptly struck both sanction orders, struck all discovery, and struck all attempts to plead misconduct before granting a summary judgment of foreclosure. Yet, that successor judge granted a stay, conceding a substantial likelihood of success on appeal. However, the Third DCA issued a PCA, denied another Motion to Disqualify, and denied a Motion for a Written Opinion, for Rehearing, and Rehearing En Banc. This is now before this Court as a Petition for Writ of Mandamus as a due process violation for refusing to write an opinion.

In the other PCA issued two days after the Third DCA denied Petitioner's first Motion for Disqualification, *Bank of New York Mellon v. Donny Marin*, Bank of America, as servicer, affixed a blank endorsement years after the originator ceased to exist and years into the foreclosure litigation. Bank of America also recorded and presented a backdated mortgage assignment representing a transaction that never did

or could happen. That trial judge abused its power using threats of sanctions, contempt, and a bar complaint for pressing this misconduct and even ignored precedent of this Court by denying a continuance to file a proper motion to disqualify as required by *Rogers v. State*, 630 So. 2d 513 (Fla. 1993). This Court issued a public reprimand to Judge Cheryl Aleman for nearly the exact same abuse of power. *In re Aleman*, 995 So. 2d 395, 399 fn. 1, (Fla. 2008).

Although Judge Aleman's misconduct involved a first-degree murder case and this case involves mortgage foreclosures, the Code of Judicial Conduct makes no distinction. As this Court instructed in *Aleman*:

> Canon 1 provides, in pertinent part, that judges 'should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved.' Canon 2A provides that judges shall 'respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.' Canon 3B(4) provides that judges shall be 'patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.' *Id.*

In the *Marin* case, the Third DCA quietly condoned criminal foreclosure misconduct by another PCA. The Third DCA affirmed a trial judge that also condoned criminal foreclosure misconduct and granted a final judgment of foreclosure in what was clear reversible error. That same trial judge denied a timely Rule 1.540(b) motion without allowing any argument prompting a second appeal.

In that second *Marin* appeal, the Third DCA issued a second PCA, just two days after denying the Motion to Disqualify in this case. Then, the Third DCA refused to disqualify itself, write an opinion, or grant rehearing, a result that would negatively impact the public's perception of the judiciary's ability to render meaningful justice.

B. The Chief Judge of the Third DCA: Training Witnesses to Commit Perjury in Foreclosures is Not Illegal, its Irrelevant

Most recently, the Honorable Miami Dade Circuit Court Judge Pedro P. Echarte, Jr. issued an Order to Show Cause why Ditech Financial, LLC and its counsel should not be held in indirect criminal contempt. See Order to Show Cause attached as Appendix J. Judge Echarte's order said that Ditech defied his order to produce discovery that showed Ditech trained its witnesses to commit perjury to admit prior servicer's records into evidence under false pretenses. The boarding process never actually audits the loans for accuracy despite what Ditech trains its witnesses to testify to in court. The Daily Business Review published several front page articles about it.

The Chief Judge of the Third DCA dismissed the perjury underlying Judge Echarte's order to show cause as "irrelevant" during oral argument, suggested Judge Echarte exaggerated the charges, and insisted undersigned counsel should have agreed to a legally insufficient motion to deem training manuals that exposed the perjury as confidential. Another associate judge personally attacked undersigned

counsel, calling him "sneaky" at the end of the oral argument. This all certainly violated Canon 1, Canon 2A and Canon 3B(4)of the Code of Judicial Conduct.

The third judge on the panel, to his credit, made Ditech's counsel admit the motion to deem records confidential was legally insufficient. That third judge also correctly noted the Third DCA lacked jurisdiction to hear an appeal of that non-final order to show cause by a common law writ. The Third DCA denied a motion to dismiss that appeal that argued an appellate court cannot intervene before a trial court even conducted an arraignment on the order to show cause. This chills trial judges intent on establishing, maintaining, and enforcing high standards of conduct in foreclosures to preserve the integrity and independence of the judiciary.

After the oral argument, undersigned counsel filed a timely motion to disqualify the Chief Judge and the associate judge who made the personal attack during oral argument. See attached as Appendix B. This Motion to Disqualify incorporated the three prior motions to disqualify the Third DCA filed by undersigned counsel in this case and the two PCA's discussed above.

This last motion to disqualify set forth the objective, cumulative, and overwhelming reasons to question the Third DCA's impartiality. All the motions to disqualify referenced over 36 foreclosure appeals undersigned counsel litigated before the Third DCA over the past decade. Virtually every appeal of a judgment of foreclosure ended with a PCA. It didn't matter whether the issue brought forth

was due process violations, hearsay, fraud, perjury, lack of jurisdiction, bias, or whatever. The Third DCA refused to write an opinion, grant rehearing, or certify conflict with opinions of other DCA's or this Court that reached the opposite result.

All the Motions to Disqualify explained how in virtually every appeal where the trial judge ruled in favor of undersigned counsel's client, the Third DCA reversed with opinions that were both intellectually and factually dishonest. The Third DCA applied the wrong standard of review to reverse evidentiary rulings and findings of unclean hands by several judges. The Third DCA made findings of fact in direct conflict with the actual record. The Third DCA ignored law that could expose its result to further appellate review. All to ensure a pre-determined result – foreclosure.

The objective reasons to question the Third DCA's impartiality all center on its attempt to cover up, protect, and ignore well-documented fraud on the court in foreclosures. Yet, trial judges are growing more concerned about the judicial canons than with being reversed by the Third DCA. Trial judges regulating their courtrooms to confront misconduct by foreclosure plaintiffs should be commended.

II. Judge Beatrice Butchko Sounded the Alarm in this Case

A growing chorus of respected federal and state court judges have broken their silence. The national media is investigating. Trial judges are entering orders finding unclean hands and issuing orders to show cause based on fraud upon the court. No doubt similar lapses of judicial ethics occurred throughout the history of Florida

jurisprudence. Civil rights lawyers probably faced similar obstacles from judges on the wrong side of history. The rule of law eventually prevailed. It always does.

No court should tolerate a party that suborns perjury from senior executives, defies court orders, lacks candor to the tribunal, trains witnesses to lie to admit evidence under false pretenses, or orders the destruction of evidence in direct violation of a court ordered subpoena. All of this criminal foreclosure misconduct has been raised before the Third DCA, and all of it PCA'd or excused. It certainly was not just Bank of America engaged in misconduct.

The Honorable Judge Beatrice Butchko was the first to firmly speak out for the integrity of the judiciary. She found unclean hands and issued an order to show cause why HSBC and Ocwen should not be held in Indirect Criminal Contempt for Fraud upon the Court. Judge Butchko found (1) the Ocwen witness gave testimony that was not credible; (2) Ocwen's records were not trustworthy; (3) the Ocwen witness testified to hearsay on hearsay to establish mailing of the default letter; (4) the assignment of mortgage showing a direct sale between HSBC and the originator was false; (5) the specific endorsement showing a direct sale between HSBC and the originator was false; (6) Ocwen trained its witnesses to testify to perjury, a "legal fiction" that loans were audited for accuracy before boarding; (7) HSBC represented it had fully complied with the Court's discovery order; and (8) HSBC did not comply with the Court's discovery order.

HSBC appealed even before Judge Butchko completed the discovery for her order to show cause. The Third DCA never ruled on a motion to strike HSBC's brief as sham because it falsely claimed Ocwen audited loans for accuracy during its loan boarding process. The Third DCA found that Ocwen's boarding process does not audit loans. Yet, the Third DCA reversed a finding of unclean hands and the order to show cause without comment, and without considering that Ocwen has a contract management department that creates after-the-fact endorsements and assignments.

This was not the act of a fair and impartial appellate court. The Third ignored this Court's instructions on the standard of review, the rules of hearsay, and the standard for standing in foreclosures. It wasn't by accident. It was by design to reach a result that unfairly favors large financial institutions – foreclosure.

A. **Judge Butchko Did Not Abuse Her Discretion**

The Third DCA has held a finding of unclean hands cannot be reversed absent a clear abuse of discretion. *Katcher v. Sans Souci Co.*, 200 So. 2d 826, 827 (Fla. 3rd DCA 1967). This Court instructs that "reviewing courts apply a "reasonableness test" to determine if the trial court has abused its discretion, which provides that if reasonable people could differ as to the propriety of the trial court's action, the action is not unreasonable." *Ham v. Dunmire*, 891 So. 2d 492, 495 (Fla. 2004), citing, *Mercer v. Raine*, 443 So. 2d 944, 945-46 (Fla. 1983). In *Mercer*, this Court held:

> The exercise of discretion by a trial judge who sees the parties first-hand and is more fully informed of the situation, is essential to the just

> and proper application of procedural rules. In the absence of facts showing an abuse of that discretion, the trial court's decision excusing, or refusing to excuse, noncompliance with rules ... must be affirmed.... It is the duty of the trial court, and not the appellate courts, to make that determination. Id. at 327-28. This same rule of law has been stated and followed by the United States Supreme Court ... the appellate court must fully recognize the superior vantage point of the trial judge ... If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. Id. at 1203.

Judge Echarte agreed with Judge Butchko that training witnesses to commit perjury is contempt of court worthy of an order to show cause. In non-foreclosure cases, the Third DCA "has consistently held that the giving of perjured testimony obstructs the proper administration of justice and, thus, is subject to a criminal contempt proceeding." *Sauls v. State*, 354 So. 2d 435, 436 (Fla. 3rd DCA 1978).

Yet, the Third DCA reversed Judge Butchko, even though its opinion acknowledged that Ocwen does not audit loans during the boarding process, which means Ocwen trained its witnessed to commit perjury, just like Ditech. *HSBC Bank USA, Nat'l Ass'n v. Buset*, 241 So. 3d 882, 892 (Fla. 3rd DCA 2018). The Third DCA violated established Florida law and appellate procedure to illegally reverse Judge Butchko on this point. Such illegal conduct by an appellate court chills trial judges from establishing, maintaining and enforcing high standards of conduct which is necessary to preserve the integrity of the judiciary as fair and impartial.

Moreover, Judge Butchko's final judgment is consistent with the ruling of the Honorable Judge Debra Silber of the Supreme Court of Kings County, New York,

cited in Buset's Motion for Sanctions Under the Court's Inherent Contempt Powers for Fraud Upon the Court. *U.S. Bank Nat. Ass'n V. Bressler*, 33 Misc. 3d 1231(A) *1-2, 943 N.Y.S.2d 795 (Sup. Ct. 2011). In *Bressler*, Judge Silber held a MERS assignment of the mortgage without the note is a nullity. Judge Silber also found that MERS lacked the power and authority to execute an assignment on behalf of Freemont Investment and Loan ("Freemont") since Freemont didn't exist and that the U.S. Attorney's Office had barred the use of that MERS assignment in 2011. Judge Silber and Judge Butchko both addressed nearly the identical assignment and reached the same result that it was false evidence.

Moreover, on December 13, 2017, the Honorable West Palm Beach County Circuit Court Judge Howard Harrison entered an order finding JP Morgan Chase and Wells Fargo acted with unclean hands by presenting false testimony, false evidence, and defying a court order to produce evidence that would expose their unclean hands. See Order attached as Appendix D. Both Judge Harrison and Judge Butchko ordered production of discovery to show if the endorsement and assignment were fraudulent.

Judge Butchko did not abuse her discretion as Judge Harrison also agreed with her rulings. Both found it was unclean hands to present a false endorsement and assignment. It was unclean hands to present a witness that gives perjured testimony. It was unclean hands to defy a court order to produce discovery that interferes with the administration of justice.

This Court instructs that the elements for a contempt decree are disobedience of the court's order or disrespect to the court where the administration of justice is impeded. *Bernstein v. Bernstein*, 160 Fla. 654, 655, 36 So. 2d 190, 191 (1948). Moreover, the U.S. Supreme Court instructs "it is settled that a criminal contempt is committed by one who, in response to a subpoena calling for corporation or association records, refuses to surrender them when they are in existence and within his control." *Nilva v. United States*, 352 U.S. 385, 392, 77 S. Ct. 431, 435, 1 L. Ed. 2d 415 (1957); *citing, United States v. Fleischman*, 339 U.S. 349, 70 S.Ct. 739, 94 L.Ed. 906; *United States v. White*, 322 U.S. 694, 64 S.Ct. 1248, 88 L.Ed. 1542; *Wilson v. United States*, 221 U.S. 361, 31 S.Ct. 538, 55 L.Ed. 771; *and see United States v. Patterson*, 2 Cir., 219 F.2d 659.

On August 3, 2018, the Honorable Judge David Miller addressed a Rule 1.540(b) Motion alleging the same rubberstamped endorsement and legally impossible mortgage assignment as Judge Harrison addressed in his finding of unclean hands. See attached as Appendix E. Judge Miller found the motion stated a colorable claim of fraud upon the court and allowed discovery to proceed on the Rule 1.540(b) Motion. See attached as Appendix F.

Under an abuse of discretion standard, it matters that both the *Riley* and *Buset* judgments agreed an assignment that reflects a transaction that never happened is evidence of unclean hands. In *Riley*, the Court noted that "Fla. Stat. §817.535,

effective October 1, 2013, made it a felony to record 'any instrument containing a materially false, fictitious, or fraudulent statement or representation....' in the public records." ¶36. Reasonable people would and have agreed with Judge Butchko. Therefore, even if the Third DCA believes a false assignment is only "superfluous" and "nothing illegal or improper," reasonable people agree with Judge Butchko, and disagree with the Third DCA. As the Honorable Judge William W. Haury, Jr. wrote:

> It is ironic that our evidentiary rules are being relaxed in the one area of practice that our Supreme Court has been most concerned with. This is one of the few instances in the history of Florida jurisprudence where the Florida Supreme Court has deemed it necessary to subject an entire industry to special rule due to the industry's documented illegal behavior. The amendment of Fla. R. Civ. P. 1.110 (b) was a direct result of the robosigning scandal... Notwithstanding this, some of our courts appear to be conforming the business practices of this industry rather than requiring the business to conform to the law. Wells Fargo Bank as Trustee, etc., v. Jerry Warren, Broward County Case No. 13-010112(11), fn. 4 attached as Appendix D. (emphasis added).

Judge Haury's concerns apply to how the Third DCA is handling foreclosures. It is not just error, it is illegal for the Third DCA to ignore the standard of review.

Judge Butchko also excluded evidence as untrustworthy and found the witness testified to hearsay on hearsay about mailing the default letter. This Court instructs that "a trial court's decision to admit evidence is reviewed under an abuse of discretion standard." *Davis v. State*, 121 So. 3d 462, 481 (Fla. 2013), *citing, Hudson v. State*, 992 So.2d 96, 107 (Fla. 2008). Yet, the Third DCA reversed Senior Judge Judith Kreeger's decision which expressly adopted Judge Butchko's evidentiary

ruling from Buset which is presently on review by this Court. *Deutsche Bank Nat'l Tr. Co. v. de Brito*, 235 So. 3d 972, 976 (Fla. Dist. Ct. App. 2017), review dismissed, No. SC18-223, 2018 WL 1020561 (Fla. Feb. 22, 2018), reh'g granted, No. SC18-223, 2018 WL 1312017 (Fla. Mar. 13, 2018), and review dismissed, No. SC18-223, 2018 WL 1475202 (Fla. Mar. 27, 2018), vacated, No. SC18-223, 2018 WL 1514228 (Fla. Mar. 27, 2018).

The Third DCA cites *de Brito* as another case where it was "reversing the trial court's exclusion of similar evidence ***based on virtually identical testimony*** laying the foundation of the business records." *Id.* 974-976 (emphasis added). Therefore, another judge heard the same testimony as Judge Butchko and excluded the business records as untrustworthy. It is illegal to ignore the abuse of discretion standard of review when two judges reached the same result after hearing the same evidence.

Moreover, the Second DCA has repeatedly joined Judge Butchko and Judge Kreeger in excluding evidence of a third party mailing default letters as hearsay on hearsay. *Knight v. GTE Federal Credit Union*, 43 Fla. L. Weekly D348a (Fla. 2nd DCA February 14, 2018); *Spencer v. DiTech Financial, LLC*, 242 So.3d 1189 (Fla. 2nd DCA 2018); *Soule v. U.S. Bank Nat'l Ass'n for BNC Mortg. Loan Tr. 2007-1 Mortg. Pass-Through Certificates, Series 2007-1*, No. 2D16-3231, 2018 WL 3402390, at *2 (Fla. 2nd DCA July 13, 2018). The Third DCA should not draft opinions to prevent conflict jurisdiction or refuse to certify conflict when it exists.

Witnesses must testify from personal knowledge to comply with Fla. R. Evid. §90.604 and §90.803(6), and "if evidence is to be admitted under one of the exceptions to the hearsay rule, it must be offered in strict compliance with the requirements of the particular exception. *Yisrael v. State*, 993 So. 2d 952, 957 (Fla. 2008). The Third DCA is acting illegally, defying this Court's express instructions to admit documents into evidence only in strict compliance with a hearsay exceptions. This is not just innocent error. It is intentional, biased, and illegal.

III. The Third DCA Retroactively Impaired the Buset Contract which is Not Only Illegal, but Also Unconstitutional

In *Buset,* the Third DCA held that "a plaintiff asserting standing based on its status as a holder of the note does not have to prove ownership." *Buset* at 889. The Third DCA ignored almost a century of precedent from this Court establishing the common law rule that a party must "own and hold the note and mortgage to establish standing to foreclose." *See, Smith v. Kleiser*, 107 So. 262 (Fla. 1926); *Edason v. Central Farmers Trust Co.*, 129 So. 698 (Fla. 1930). Instead, the Third DCA cited non-binding cases from federal courts around the county in support of its own rule.

This Court also instructs that "statutes in derogation of the common law are to be construed strictly, however.... courts will infer that such a statute was not intended to make any alteration other than was specified and plainly pronounced." *Carlile v. Game & Fresh Water Fish Comm'n*, 354 So. 2d 362, 364 (Fla. 1977). Under *Carlile*, there is no statute or rule that remotely suggests a change to the

common law rule that a party must prove it owns and holds the note and mortgage to prove standing to foreclose. Fla. Stat. §673.3011 deals only with negotiable instruments and makes no mention of the words mortgage or foreclosure. Fla. Stat. §702.015 is clearly retroactive and also says nothing about the common law rule.

The Third DCA may not constitutionally remove ownership from the common law rule years after the parties consummated their contract. Any court ruling or statute that would retroactively change the common law rule on standing would be an unconstitutional retroactive impairment of contract. American *Optical Corporation v. Spiewak*, 73 So.3d 120 (Fla. 2011); *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d 494 (Fla. 1999); *Pembroke Lakes Mall Ltd. v. McGruder*, 137 So.3d 418 (Fla. 2014); *Eastern Enterprises v. Apfel*, 524 U.S. 498, 532, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998).

This Court promulgated Fla. R. Civ. P. 1.110, and its accompanying Form 1.944 in 1992, and again in 2000, which imposed the common law rule that a plaintiff must prove ownership to foreclose. *In re Amendments to the Florida Rules of Civil Procedure*, 604 So. 2d 1110, 1182 (Fla. 1992); *In re Amendments to the Florida Rules of Civil Procedure*, 773 So. 2d 1098, 1144 (Fla. 2000). This common law rule was in effect when the Buset's closed on their mortgage. It cannot be changed after the mortgage by statute or judicial decree. That would retroactively impair the contract in violation of the Florida and U.S. Constitutions.

This is not the first time the Third DCA has discarded this common law rule. In 2005, Judge Jon Gordon struck all MERS foreclosures as sham because MERS admitted it falsely claimed to own the notes and mortgages. In 2007, the Third DCA held "MERS was not—again, as usual—its 'owner.' We simply don't think that this makes any difference." *Mortg. Elec. Registration Sys., Inc. v. Revoredo*, 955 So. 2d 33, 34 (Fla. 3rd DCA 2007). With that illegal reversal, the Third DCA unleashed the robo-signing scandal where banks defiled courts like a flock of seagulls on Ex Lax.

This Court instructs: "[t]o allow a District Court of Appeal to overrule controlling precedent of this Court would be to create chaos and uncertainty in the judicial forum, particularly at the trial level." *Hoffman v. Jones*, 280 So. 2d 431, 434 (Fla. 1973). Had the Third DCA followed the common law rule, there would be no robo-signing scandal, no false and fictitious mortgage assignments and no blank endorsements backdated by perjury. This disrespect for the rule of law has caused chaos. It is better that the rule of law be restored and the Constitution followed.

IV. This Court Must Fight to Vindicate the Integrity of the Judiciary Against Banks that Commit Fraud on the Court While the Third DCA Turns a Blind, Biased Eye Away From that Fraud

The work of exposing this misconduct is a fight worth fighting. This work is possible because fair and impartial judges have insisted on discovery and demanded answers to difficult questions from these modern day monopolies. As those judges fight to vindicate the integrity of the judiciary, other judges threatened undersigned

counsel with jail, bar complaints, and contempt for doing this work. Undersigned counsel recognizes the inherent professional and personal risks he faces for challenging corruption by the wealthy and powerful and those that would condone their behavior. This has long been a spiritual journey, much like David v. Goliath.

Many good friends have warned undersigned counsel this unpopular work could also result in the loss of his bar license. Not because the work lacks integrity, but because these financial institutions are monopolies that have undermined the integrity of our judicial system. The pendulum should shift back to the rule of law.

Meanwhile, a Collier County Judge recently granted $67,000 in sanctions against undersigned counsel under Fla. Stat. §57.105 for filing a Rule 1.540(b) motion with evidence Bank of America ordered the destruction of 1.88 Billion objects of data, metadata and encryption keys in a military grade purge of evidence in defiance of a court ordered subpoena.

The Judge ignored the Rule 1.540(b) motion's evidence of fraudulent acts carried out by Bank of America, telling undersigned counsel that he "lost sight of the fact that the borrower hadn't paid." That judge later essentially admitted that the Rule 1.540(b) motion was not filed in bad faith and that undersigned counsel was justifiably challenging corruption in the foreclosure system. That sanction is on appeal as an egregious, chilling abuse of power.

Undersigned counsel does this unpopular work knowing that this Court just granted an "emergency motion" to suspend Mark Stopa from the practice of law. Mr. Stopa is a preeminent foreclosure defense attorney from Tampa with over 2,000 cases, 1,000 trials, 100 appellate oral arguments. See Order of Suspension attached as Appendix D. Many well-respected trial and appellate court judges testified on Mr. Stopa's behalf that Banks unfairly targeted him because his most impressive string of trial and appellate victories in foreclosures cost them a lot of money.

Mr. Stopa was found guilty of acting disrespectful to judges who he believed were disrespecting the rule of law by being biased and illegally taking peoples' homes. Mr. Stopa has since challenged the "emergency" motion because the Florida Bar had no probable cause finding for those allegations that date back as far as 16 months. See Motion for Reconsideration attached as Appendix E.

Respectfully, Mr. Stopa did far more good for the practice of foreclosure law than Caryn Graham, the managing attorney of the now disgraced Marshall C. Watson law firm who spearheaded the effort to defile the courts during the robo-signing scandal. Yet, Ms. Graham received a mere 60 day suspension. See order of Suspension attached as Appendix E. She didn't even have to reapply to the Bar.

Suspending Mr. Stopa's law license mostly makes it easier for banks to take people's homes without following the law. This Court should jealously guard against the perception of inherent bias and a systemic failure of the integrity of the

judiciary. If lawyers committing fraud on the courts to push through foreclosures get a slap on the wrist, lawyers fighting the good fight against bad corporate citizens should not lose their ability to practice law. That death sentence is simply not fair.

Undersigned counsel has deeply held religious faith in the integrity of the judiciary and believes constitutional officers sworn to protect and defend the constitution will impartiality judge these facts and uphold the rule of law. Yet, undersigned counsel faithfully believes in the 23rd psalm, "Yea, though I walk through the valley of death, I shall fear no evil...." If Judges charged with addressing these issues read the 58th and 82nd psalms, only good and positive will result.

Respectfully, this alarming constitutional crisis is a direct result of securities fraud and foreclosure fraud that destroyed the American dream for millions of Americans for which no Wall Street executives went to prison. Wall Street sold mortgage backed securities without properly backing those securities with the mortgages. This securities fraud scheme transferred trillions of dollars in assets from American citizens to the world's largest financial institutions. Despite a record number of fines and penalties, no one went to jail, which is bad for the rule of law.

Over a decade ago, the Honorable Christopher A. Boyko, U.S. District Court Judge for the Eastern Division of the Northern District of Ohio dismissed over a dozen foreclosure cases with false mortgage assignments from his court in one opinion. *In re Foreclosure Cases*, No. 07CV2532, 2007 WL 3232430 (N.D. Ohio

Oct. 31, 2007). See Order attached as Appendix T. Judge Boyko rejected banks that backlog his docket with robo-signed, incompetent evidence, writing in footnote 3:

> Plaintiff's, 'Judge, you just don't understand how things work,' argument reveals a condescending mindset and quasi-monopolistic system where financial institutions have traditionally controlled, and still control, the foreclosure process.... There is no doubt every decision made by a financial institution in the foreclosure process is driven by money....Id. at 5-6, fn. 3.

These banks promised to stop using false evidence in foreclosures and help millions of American families in underwater mortgages after the $25 Billion National Mortgage Settlement from April of 2012. Yet, we still face false evidence in foreclosures and Bank of America only reduced the first mortgages on less than 24,000 families nationwide, far less than the millions who needed help.

It is apparent the executive branch did not vindicate the integrity of the judiciary. We have lost our constitutional democracy if these modern day monopolies are forever impervious to the rule of law. No party has the right to trifle with the courts. Certainly, not a party to the $25 Billion National Mortgage Settlement. Judges swear an oath to the Constitution of the United States of America, not the profits of the Bank of America. Respectfully, this fraudulent foreclosure process must be derailed so people don't lose their homes to false and fictitious evidence, perjury, and other egregious misconduct.

Undersigned counsel is prepared to fight that to the end, sounding the alarm, calling on those sworn to protect and defend the constitution. If an unfair judiciary

is accepted in foreclosures, that will eventually bleed into every area of practice as the rule of law we all cherish and love suffers a slow, muffled death, much like all the wildlife presently being poisoned by Big Sugar's pollution of Lake Okeechobee.

This problem is systemic and was unspoken, until recently. U.S. Bankruptcy Judge Robert N. Drain found Wells Fargo "improving its own position by creating new documents and indorsements from third parties to itself to ensure that it could enforce its claims." *In re: Cythia Carssow-Franklin*, Case Number 15-CV-1701 (KMK). See Order attached as Appendix V. In *Franklin*, Judge Drain applied the same law found in Fla. Stat. §673.3081, noting Wells Fargo systematically created "after-the-fact" documentation "on behalf of third parties" by in-house "assignment and indorsement teams" which Wells Fargo tried to cover-up with an invalid assignment by Mortgage Electronic Registration System, Inc ("MERS").

Judge Karas affirmed Judge Drain finding that the Wells Fargo witness' testimony showed "the general indorsement and assignment practices of Wells Fargo endorsement and assignment teams, … showed 'a general willingness and practice on Wells Fargo's part to create documentary evidence, after the fact, when enforcing its claims. Id. *14. Judge Karas also noted:

> the fact that Wells Fargo had assignment and indorsement teams that, as the bankruptcy court found, would act to improve the record with respect to various notes and deeds of trust in Wells Fargo's possession, makes the fact that the indorsement at issue here was added after-the-fact to improve Wells Fargo's standing more probable "than it would be without the evidence. Id.

Judge Karas also wrote: "in the wake of the recent foreclosure crisis, and the dubiousness of the common robo-signing practices of various banks and other foreclosing entities… it may be time to reconsider whether "forged or unauthorized signatures" remain "very uncommon." Id. at fn. 11. Most recently, the Court entered an order resolving Franklin where the borrower got a free home and Wells Fargo paid $300,000 in attorney's fees. See Settlement Order attached as Appendix W.

In stark contrast to Bank of America, Wells Fargo admitted it used assignment and endorsement teams to create false evidence after the fact. Bank of America suborned perjury and destroyed evidence to cover up their assignment and endorsement teams in defiance of many court orders. Such brazen, monopolistic misconduct calls upon judges to violate their oaths to the rule of law and should be soundly rejected by this Court, even if the Third DCA chooses to accept that call.

Just last year, on March 23, 2017, the Honorable U. S. Bankruptcy Judge Christopher M. Klein of the Eastern District of California sanctioned Bank of America $45 million for foreclosure misconduct involving its Senior Management. *Sundquist v. Bank of America*, --B.R.--, 2017 WL 1102964 *46 (U.S. Bkrptcy, E.D. Cal. issued March 23, 2017). See Order attached as Appendix U.

Judge Klein trailblazed a path to impose meaningful sanctions against a large financial institution like Bank of America with over $2.2 trillion in assets. Judge Klein directed the $45 Million to benefit the public good by being donated to five

California Law Schools with consumer protection law programs. This ensured the borrower did not receive an undue windfall. The opinion "tells a story that smacks of cynical disregard for the law." Id. at *47. The Court noted:

> The high degree of reprehensibility, coupled with the significant involvement by the office of the Chief Executive Officer, calls for of an amount sufficient to have a deterrent effect on Bank of America and happens that Bank of America has a long rap sheet of fines and penalties in cases relating to its mortgage business. In March 2012, Bank of America agreed to pay $11.82 billion to settle litigation prosecuted by federal and state regulators regarding its foreclosure and mortgage servicing practices. In June 2013, Bank of America agreed to pay $100 million to settle litigation regarding mortgage loan origination issues. In December 2013, Bank of America agreed to pay $131.8 million to settle litigation with the Securities Exchange Commission regarding the structuring and sale of mortgage securities to institutional investors. In March 2014, Bank of America was fined $9.5 billion by the Federal Housing Finance Agency for defrauding Fannie Mae and Freddie Mac regarding mortgage-backed securities. In an environment in which Bank of America has been settling, i.e. terminating exposure to higher sums, for billions and hundreds of millions of dollars, a few million dollars awarded as § 362(k)(1) punitive damages award in a real case involving real people, in which the human element of the consequences of Bank of America's behavior comes to the fore for the first time is appropriate and proportional. *39-40.

Judge Klein questioned "why should Bank of America be permitted to evade the appropriate measure of punitive damages for its conduct? Not being brought to book for bad behavior offensive to societal norms merely incentivizes future bad behavior." This federal judge noted Bank of America's "attitude of impunity" citing a failed governmental regulatory system.

In describing the Independent Foreclosure Review ordered by the federal regulators, Judge Klein noted "that turned out to be a chimera." Id. at *43. Even investigations by the Consumer Financial Protection Bureau, were "thwarted" with a "bald-faced lie" and a refusal to turn over documents. Judge Klein then issued an order refusing to dismiss and vitiate the final judgment ruling "to name and to shame Bank of America on the public record in an opinion that stays on the books serves a valuable purpose casting sunlight on practices that affect ordinary consumers. Other persons dealing with Bank of America will be able to gauge their experiences against what has been revealed in this case." *Sundquist v. Bank of America (In re Sundquist)*, 566 B.R. 563 (Bankr. E.D. Cal. 2017).

"EQUAL JUSTICE UNDER LAW" is a banner carved across the front of the U.S. Supreme Court which instructs "our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which Legislatures, executives and courts are expected to make, execute and apply laws." The guaranty of due process "was aimed at undue favor and individual or class privilege...." *Truax v. Corrigan*, 257, U.S. 312,333, 42 S.Ct. 124, 129 (1921).

The Fourth DCA certified a question to the Florida Supreme Court of great public importance in the wake of the robo-signing scandal finding "many, many

mortgage foreclosures appear tainted with suspect documents…[which] may dramatically affect the mortgage foreclosure crisis in State." *Pino v. Bank of New York, Mellon*, 57 So. 3d 950, 954 (Fla. 4th DCA 2011). The Honorable former Chief Judge Polen dissented in a powerful opinion supporting sanctions that argued:

> Decision-making in our courts depends on genuine, reliable evidence. The system cannot tolerate even an attempted use of fraudulent documents and false evidence in our courts. The judicial branch long ago recognized its responsibility to deal with, and punish, the attempted use of false and fraudulent evidence. When such an attempt has been colorably raised by a party, courts must be most vigilant to address the issue and pursue it to a resolution. *Pino v. Bank of New York, Mellon*, 57 So.3d 950, 959 (Fla. 4th DCA 2011).

The Chief Judge of the Second DCA recently issued a concurring opinion noting, it still "appears that many foreclosure judgments are entered based on dubious proof by the banks due to an understandable lack of sympathy for defendants who are years behind on payments…" and that there is need to "alleviate the temptation to excuse strict compliance with the laws of evidence." *Shaffer v. Deutsche Bank Nat'l Tr. for Am. Home Mortg. Inv. Tr. 2006-1*, 235 So. 3d 943, 947 (Fla. 2nd DCA 2017), reh'g denied (Jan. 25, 2018).

The Third DCA instructs that fabrication of evidence allegations are "a serious charge which requires a complete explanation of the circumstances of the alleged wrong and, therefore, merits a full opportunity to present all the available facts to the court." *Pelekis v. Florida Keys Boys Club*, 302 So.2d 447, 448 (Fla. 3rd DCA 1974). No party "has a right to trifle with the courts." *Ramey v. Haverty Furniture*

Companies, Inc., 993 So. 2d 1014, 1018 (Fla. 2nd DCA 2008). The *Ramey* Court cited the United States Supreme Court holding by Justice Black that:

> [T]ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *Id.* at 1020-21, *citing, Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250 (1944), receded from on other grounds by Standard Oil Co. of Cal. v. United States, 429 U.S. 17, 97 S.Ct. 31, 50 L. Ed.2d 21 (1976).

As the Florida Supreme Court instructs:

> Busy judges managing overloaded motion calendars often depend on the attorneys appearing before them to provide them with accurate information about the issues involved, the facts relevant to those issues, and the law applicable to those facts.... We do not accept the notion that outcomes should depend on who is the most powerful, most eloquent, best dressed, most devious and most persistent with the last word-or, for that matter, who is able to misdirect a judge. *Boca Burger, Inc. v. Forum*, 912 So. 2d 561, 573 (Fla. 2005), as revised on denial of reh'g (Sept. 29, 2005).

To her credit, the Honorable Judge Beatrice Butchko was the first to take a bold stand for the integrity of the judiciary. Her order to show cause finding fraud on the court and unclean hands started the return to the rule of law. U.S. District Court Judge Ursula Ungaro followed finding the use of false and fictitious evidence is barred by the National Mortgage Settlement. Judge Harrison, Judge Miller, Judge Echarte, Judge Klein, Judge Drain, Judge Karas and soon many others will join the fight to protect and defend the constitution. This Court should join their ranks.

The basis for the judicial power, which is referenced in Article V, Section 1 of the Florida Constitution, is found in Federalist Number 78, written by Alexander Hamilton as Publius. The Federalist Society warns that[1]:

> Impartiality is not only an individual duty but a systemic ideal to which the judiciary is institutionally committed by explicit constitutional commands. The Constitution's promise of due process of law is, among other things, a promise of impartial adjudication in the courts—a promise that people challenging assertions of government power will have access to a neutral tribunal that is not only free from actual bias but free even from the appearance of bias. To the extent that private citizens cannot reasonably be confident that they will receive justice through litigation, they will be tempted to seek extra-legal recourse.

The Third DCA is clearly in violation of the judicial canons governing impartiality. The Third DCA wrote opinions that state facts which support a predetermined outcome but defy the record on appeal. The Third DCA applied the wrong standard of review to reach a predetermined outcome that favor banks over homeowners - foreclosure. This is an epic constitutional crisis. The Third DCA is acting illegally to favor Democracy will not fall if financial institutions are held to the rule of law. To the contrary, democracy falls if the public believes Courts favor bad corporate citizens over the people.

One final point, HSBC and Ocwen have never made any settlement offer other than full payment to resolve this foreclosure without litigation, even after all this.

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[1] http://www.fed-soc.org/blog/detail/judicial-impartialitymust-not-be-a-mere-facade-on-the-dangers-of-individual-andsystematic-judicial-bias.

WHEREFORE, this Court should accept jurisdiction to hear this appeal either as conflict jurisdiction or as an extraordinary writ of quo warranto, and grant any further relief deemed mete and just.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to broderickp@gtlaw.com, okleshenj@gtlaw.com, flservice@gtlaw.com, starksm@gtlaw.com, daltonk@gtlaw.com, leonb@gtlaw.com, chalkleyt@gtlaw.com to Patrick Broderick, Esq., Greenberg Traurig, 777 S Flagler Dr Ste 300, West Palm Beach, FL 33401-6167 on 6th day of August, 2018.

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