IN THE SUPREME COURT OF FLORIDA

S.C. CASE NO: SC14-1265
L.T. CASE NO: 5D12-3823

LEWIS BROOKE BARTRAM, et al.,
Petitioners,

vs.

U.S. BANK, N.A.,
Respondent.

ON APPEAL FROM THE
FIFTH DISTRICT COURT OF APPEAL

US FINANCIAL NETWORK'S *AMICUS CURIAE* BRIEF IN SUPPORT OF U.S. BANK, N.A.

Jane E. Bond, Esquire
Florida Bar No: 817244

Robyn R. Katz, Esquire
Florida Bar No: 146803

MCCALLA RAYMER, LLC
225 E Robinson St, Suite 660
Orlando, Florida 32801
Telephone: (407) 674-1850
Fax: (321) 248-0172
Email: mrservice@mccallaraymer.com
Counsel for USFN

David W. Rodstein
Florida Bar No: 169536

PADULA HODKIN, PLLC
101 Plaza Real South, # 207
Boca Raton, FL 33432
Telephone: (954) 514-9276
Fax: (954) 827-3708
Email: rodstein@padulahodkin.com
Sec. email:charise@padulahodkin.com
Counsel for USFN

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

SUMMARY OF ARGUMENT

This Court should decline to answer the certified question because it seeks an advisory opinion not necessary to the District Court's correct result below. The District Court correctly reversed the final judgment, which canceled both the mortgage and the note and quieted title against Respondent, U.S. Bank, N.A. ("the Bank"). The judgment was in error for three reasons.

First, termination of the mortgage lien is defined by Fla. Stat. § 95.281. According to § 95.281, as the maturity date of the mortgage debt is ascertainable from the record of the mortgage, the lien continues for five years after that maturity date. The maturity date is in the year 2035. Thus the mortgage lien remains valid until the year 2040. The Bank's exercise of the acceleration provision in the mortgage contract did not affect the life of the lien.

Second, the Bank's exercise of the acceleration clause did not make the full debt due. The effect of an acceleration provision is controlled exclusively by the terms of the contract documents that create that acceleration right. In this case, the acceleration right is subject to and limited by another contract provision. Pursuant to paragraph 19 of the mortgage, Petitioner Lewis Bartram ("L. Bartram") always had the right to pay less than the full debt. Pursuant to paragraph 1, the Bank

always had the right to reject a payment less than the amount due, but due to paragraph 19 that amount was never the full debt. The amount due would never be the full debt until entry of a judgment or maturity of the loan. Until one of those events occur, the amount due increases monthly as each new payment data arrives

By making acceleration subject to payment of only past due amounts, which continue to accrue with each passing month, the contract preserves as long as possible the borrower's ability to avoid foreclosure. It also leaves the installment character of the loan in place until the reinstatement right terminates, upon entry of judgment. Thus, the sole purpose and effect of acceleration is to create a mechanism for entry of a judgment in the amount of the full debt.

Third, equity abhors forfeiture, and cancelation of the Bank's note and mortgage was forfeiture. That forfeiture was unsupported by any equity in favor of L. Bartram. On the contrary, L. Bartram has lived rent-free for over nine years in the property he pledged as security for the loan the trial court canceled. The trial court's judgment directly resulted in an enormous windfall in favor of L. Bartram and forfeiture against the Bank, which did no wrong.

In addition to the legal and equitable above, public policy forcefully militates against cancellation of the Bank's mortgage. The trial court's ruling would spawn a public policy hazard by creating a powerful incentive for foreclosure defendants to purposely delay their foreclosure actions for five years

and then seize on or create any plausible basis for a dismissal. This would have a negative impact on the judicial system and on the availability of affordable mortgage financing.

For all these reasons, this Court should approve the District Court's ruling and either decline to answer the certified question or answer the certified question in the negative.

STANDARD OF REVIEW

"Regarding a certified question of great public importance, this Court undertakes de novo review of questions that present a pure question of law." *Arsali v. Chase Home Fin. LLC*, 121 So.3d 511, 514 (Fla. 2013). This case turns on statutory interpretation and contract interpretation, both pure questions of law.

ARGUMENT

I. The certified question asks for an advisory opinion on an issue unnecessary to approve the District Court's correct ruling, which reversed the trial court.

The District Court reached the correct result in this case based on the statute of repose analysis in Section II below. No statute of limitations ruling is necessary to approve this correct result. For that reason, and for the reasons argued below,

this Court should approve the decision of the District Court without answering the certified question. *See* *Estate of McCall v. United States*, 134 So.3d 894, 915 (Fla. 2014) (declining to answer certified questions that "would constitute an advisory opinion, which we are not authorized to provide.").

There is a case pending in the Third District Court of Appeal which does require a ruling on the effect of acceleration on the statute of limitations – *Deutsche Bank Trust Co. Americas v. Beauvais*, 2014 WL 7156961 (Fla. 3d DCA 2014) (motions for rehearing pending at time of submission of this brief). In *Beauvais*, the statute of limitations based on dismissal of a prior foreclosure was raised as a defense to foreclosure. That did not occur in the present case. Thus, the effect of acceleration on the statute of limitations should be decided by the appropriate court in *Beauvais* – not in the present case.

II. The trial court erred in canceling the mortgage because the mortgage lien does not terminate until March 1, 2040.

A. Termination of the mortgage lien occurs five years after maturity pursuant to § 95.281.

The termination of a mortgage lien is controlled by § 95.281, the mortgage statute of repose. Under § 95.281, a mortgage lien terminates five years after the date the secured debt matures if the date of maturity "is ascertainable from the record" of the mortgage. § 95.281, Fla. Stat. (2014).

The date of maturity in this case appears on the face of the mortgage. "Borrower has promised … to pay the debt in full not later than March 1, 2035." R. II: 249 at ¶ E.[1] As the date of maturity is ascertainable from the record of the mortgage, the mortgage lien terminates five years after maturity, i.e. March 1, 2040. Until that date arrives, or the mortgage is satisfied, the lien remains a legitimate encumbrance on the property. *Floorcraft Distributors v. Horne-Wilson, Inc.*, 251 So.2d 138 (Fla. 1st DCA 1971). ("It is uniformly held that a mortgage lien is not extinguished until the mortgage debt is actually satisfied.") As a legitimate encumbrance, the mortgage is not a cloud on title and cannot be canceled in an action to quiet title. Therefore, the District Court was correct in reversing the judgment, which canceled the mortgage and quieted title.

B. Acceleration of the debt did not accelerate the maturity date.

Acceleration of a mortgage debt has no effect on the maturity date and does not alter the repose analysis. *Beauvais*, 2014 WL 7156961 at *11 (reversing a portion of the judgment that canceled mortgage and quieted title). In *Beauvais*, the Third District Court expressly rejected the property owner's argument that "acceleration of the note accomplishes an acceleration of the maturity date of the note itself." *Id.* As the life of the lien defined by § 95.281 is based on facts

[1] All references to the record refer to the record of the Circuit Court proceedings and are designated as "R. II: 249", where II is the volume and 249 is the page number.

ascertainable from the record of the mortgage, non-record events such as acceleration cannot affect the life of the lien.

This conclusion is supported by the plain language of § 95.281 and by the contractual relationship between the Bank and L. Bartram. Separate and apart from L. Bartram's promise to make installment payments, he promised in the note and in the mortgage to pay the full outstanding balance at maturity. "If on March 1, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the 'Maturity Date'." Note, R. III: 417 at ¶ 3. "Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 1, 2035." Mortgage, R. II: 249 at ¶ (E).

Thus, when March 1, 2035 arrives, L. Bartram will be obligated to pay whatever debt then remains. Even if acceleration made the full debt due immediately (which it did not), the unpaid balance would still come due on March 1, 2035 due to L. Bartram's independent promise to pay on that date. Acceleration did not refer to or affect that independent promise to pay.

Petitioner Patricia Bartram ("P. Bartrum") incorrectly argues exercising an optional acceleration clause accelerates the maturity date of the mortgage. *See* P. Bartram Initial Brief, p. 6. That argument has no support in § 95.281, in the jurisprudence of Florida, or in the language of the mortgage.

P. Bartrum claims support for her argument in two bits of dicta she quotes from *Kreiss Potassium Phosphate Co. v. Knight*, 124 So. 751, 755 (Fla. 1929). *Kreiss* in no way stands for the proposition P. Bartum asserts. *Kreiss* was an appeal to this Court from an order denying the defendant's motion to set aside a decree *pro confesso* in a foreclosure case. This Court's opinion analyzed whether the defendant had asserted a meritorious defense to support its motion. The Court held a meritorious defense did exist based on grounds *unrelated* to the maturity date of the mortgage debt and *unrelated* to the termination date of the mortgage lien. Thus, the language Patricia Bartram relies upon is pure dicta and does not stand for the proposition she seeks to establish.

Moreover, the identical argument she makes here – that acceleration advances the maturity of the debt – was expressly rejected by the Third District Court of Appeals in *Beauvais*, as described above. Accordingly, the maturity date remains March 1, 2035, and the lien remains valid until March 1, 2040 or until satisfied.

III. In this contract, acceleration merely provides a mechanism for the court to award full relief in a judgment but does not terminate future installment payments.

A. The acceleration provision is subject to standard principles of contract interpretation.

A mortgage is a contract. 37 Fla. Jur 2d Mortgages and Deeds of Trust § 1 (2014); *Florida Nat. Bank & Trust Co. of Miami v. Brown*, 47 So.2d 748, 759 (Fla.

1949); *Pitts v. Pastore*, 561 So.2d 297, 301 (Fla. 2d DCA 1990) (A mortgage "is an executory contract or agreement in which one generally promises to allow a future sale of real property if a debt is not paid.").

As a term of the mortgage, the acceleration provision is "construed in accordance with the intention of the parties as disclosed by the ordinary meaning of the words used and the circumstances of the parties." *Baader v. Walker*, 153 So.2d 51, 54-55 (Fla. 2d DCA 1963) (quoting 59 C.J.S. Mortgages § 495(3) at page 784). The term "acceleration" has no statutory definition, and there is no right of acceleration except as created by contract. *Reed v. Lincoln*, 731 So.2d 104, 106 (Fla. 5th DCA 1999); *Miller v. Balcanoff*, 566 So.2d 1340, 1342 (Fla. 1st DCA 1990) (citing *Bardill v. Holcomb*, 215 So.2d 64 (Fla. 4th DCA 1968)).

In the present contract, the acceleration provision is related to other provisions. "All the various provisions of a contract must be so construed, if it can reasonably be done, as to give effect to each." *City of Homestead v. Johnson*, 760 So.2d 80, 84 (Fla. 2000) (quoting *Sugar Cane Growers Cooperative of Florida, Inc., v. Pinnock*, 735 So.2d 530, 535 (Fla. 4th DCA 1999) (holding contract unambiguous after construing all provisions "harmoniously"). Other mortgage provisions that bear on the meaning and effect of the acceleration provision are the reinstatement provision (R. II: 279 at ¶ 19) and the partial payments provision (R.

II: 251 at ¶ 1). All three provisions must be so construed, if it can reasonably be done, as to give effect to each.

B. The acceleration provision says nothing about future installments.

Generally, acceleration is a demand for the full balance of a loan, not a demand for future installments. "An acceleration clause is defined as: A provision … that requires the … obligor to pay part or all of the *balance* sooner than the date or dates specified for payment…." *Reed*, 731 So.2d at 105 (emphasis added). "[I]t is true that an acceleration of the *balance* due based upon the same default may bar a subsequent action on that default…." *Singleton v. Greymar Associates*, 882 So.2d 1004, 1006 (Fla. 2004) (emphasis added) (rejecting "the view that an election to accelerate puts all future installment payments in issue….", as held by *Stadler v. Cherry Hill Developers, Inc.*, 150 So.2d 468 (Fla. 2d DCA 1963)). "We *disagree* that the election to accelerate placed future installments at issue." *Olympia Mortgage Corp. v. Pugh*, 774 So.2d 863, 866 (Fla. 4th DCA 2000) (emphasis added).

The language used in the acceleration provision of the Bartram mortgage is consistent with the general meaning of acceleration. It allows the Bank to "require immediate payment in full of all sums secured by this" mortgage. R. II: 261 at ¶ 22. It says nothing about future installments. "The absence of a provision from a contract is evidence of an intention to exclude it rather than of an intention to

include it." *Azalea Park Utilities, Inc. v. Knox-Florida Dev. Corp.*, 127 So.2d 121, 123 (Fla. 2d DCA 1961). *See also Home Dev. Co. of St. Petersburg v. Bursani*, 178 So.2d 113, 117 (Fla. 1965) (citing *Azalea Park*). Thus, the absence of future installments from the acceleration clause is evidence of an intention by the parties to exclude future payments from the effect of the acceleration clause.

In addition to the plain language of the acceleration provision, the basic arithmetic called for by the contract shows the accelerated "all sums secured" is unrelated to future installments. "All sums secured" in the contract is calculated by adding the outstanding principal balance, interest accrued on that balance, advances secured by the mortgage, and contractual late fees. Each of these elements is calculated by looking *backward* in time to events that occurred *in the past*. For example, the outstanding principal balance equals the principal advanced at loan inception less principal payments made to date. This calculation of outstanding principal has no relation to *future* installments.

The "all sums secured" figure will be the same for a given loan history whether there are two installments or two thousand installments left until maturity – whether the total of all future installments is $2,000 or $2,000,000. It will be the same whether future installments consist of principal and interest payments or interest-only payments. It will be the same whether the mortgage requires future monthly escrow payments for taxes and insurance or not. "All sums secured" is

always the same for a given loan *history* regardless of what is to come in the *future*.

By contrast, future installments are purely forward-looking. The amount of future installment payments is calculated at the initiation of the loan by amortizing the principal amount advanced over the full term of the loan. In this case, that amount is affected by future changes in the interest rate due to the variable rate provision. However, it is *unaffected* by the amount of installment payments made – or missed – in the past.

As the acceleration provision expressly provides for the acceleration of "all sums secured" – a backward looking figure – and says nothing about "future installments," exercise of the provision has no effect on future installments and does not alter the installment nature of the loan.

C. Even after acceleration, the contract allows the borrower to pay *less than* "all sums secured".

Pursuant to the reinstatement provision of the mortgage, the borrower has the right after acceleration of "all sums secured" to pay "all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred." R. II: 259 at ¶ 19. The reinstatement amount is only a fraction of the "all sums secured" amount. Thus, even after acceleration, L. Bartram could have tendered far less than the accelerated "all sums secured," and the Bank would have

been required to accept this tender.[2] L. Bartram's reinstatement right continued until entry of a judgment.

Without paragraph 19, the borrower's common law right to reinstate would be terminated by an acceleration. "[O]nce the mortgage holder has exercised his option to accelerate, the right of the mortgagor to tender only the arrears is terminated." *Old Republic Ins. Co. v. Lee*, 507 So.2d 754, 754-55 (Fla. 5th DCA 1987) (citing *Uwanawich v. Gaudini*, 334 So.2d 116 (Fla. 3d DCA 1976)). Thus,

---

[2]Paragraph 19 permits the Bank to require four conditions for reinstatement. R. II: 259-60 at ¶ 19. The first is to pay the amount due, as already discussed. None of the other three conditions affect the amount due or when it is due. The second condition is to cure "any default of any other covenants or agreements." The third is to pay "all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument." This condition is required prior to acceleration and is therefore not a condition of reinstatement. Each of the obligations it enumerates exist in paragraph 9, independent of acceleration and reinstatement. "If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument… then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: … (c) paying reasonable attorneys' fees…. Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument." R. II: 255 at ¶ 9. The final condition is to cooperate with Lender to preserve the status quo by taking "such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged." None of these conditions affect the amount due or when it is due.

paragraph 19 extends the borrower's right to pay less than "all sums secured" past the date of acceleration.

As the reinstatement amount is calculated "as if no acceleration had occurred," the reinstatement amount increases with the arrival of every future installment date and with the advance of every future amount secured by the mortgage. The reinstatement amount continues to increase in this manner until entry of the final judgment.

Reading the acceleration provision in light of the reinstatement provision entitles the Bank to "require immediate payment in full of all sums secured…by judicial proceeding" (paragraph 22), *unless* the borrower pays all arrearages before "entry of a judgment enforcing this Security Instrument" (paragraph 19). Until judgment is entered, acceleration has no affect on the amount due and no effect on future installments.

D. After acceleration, the contract allows the Bank to reject partial payments in an amount less than the amount due.

If acceleration made the full debt immediately due, the lender would be entitled to reject a tender of only the past due amounts. "Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current." R. II: 251 at ¶ 1. This provision does not limit a lender's right to return insufficient payments "only until it exercises its acceleration right." Even after acceleration is exercised, the Bank has the right to reject a partial

payment. If acceleration under this contract truly made "all sums secured" due immediately, then a payment of just the amounts past due would be an insufficient partial payment. However, paragraph 19 permits L. Bartrum to tender only the past due amounts, even after acceleration, and the Bank is required to accept them.

E. Reading the various provisions *in pari materia* shows that the acceleration created by this contract is merely a mechanism for providing complete relief in a judgment.

As demonstrated above, the Bank was contractually required to accept tender of a paragraph 19 reinstatement amount both before and after acceleration. The paragraph 19 reinstatement amount increases each time a new monthly payment becomes due because it is calculated "as if no acceleration had occurred". R. II: 259 at ¶ 19. Thus, even though paragraph 1 provides the Bank with a contractual right to reject payments less than the amount due, the Bank must accept the reinstatement amount, which is only a fraction of the total debt.

The singular way to read the mortgage contract so as to give effect to all three of these provisions (acceleration, reinstatement, and partial payments) is to recognize the acceleration provision does not make the full debt immediately due and does not affect future installments. Rather, it creates a mechanism by which the Bank realizes the full benefit of its security – a judgment for the full debt – while extending the borrower's ability to avoid foreclosure through a much smaller reinstatement payment.

This is a reality of the contract's legal effect that does not depend on whether a borrower ever tenders the reinstatement amount. His right to do so, expressed in the unambiguous language of the mortgage contract, reveals the acceleration provision does not result in the full debt becoming immediately due. *See* *Sugar Cane Growers*, 735 So.2d at 535 (holding contract unambiguous after construing all provisions "harmoniously"); and *Morton v. Ansin*, 129 So.2d 177, 180-81 (Fla. 3d DCA 1961) ("In construing a negotiable instrument the object is to ascertain the intent of the parties by a reasonable construction. When the intention is sufficiently apparent, effect should be given to that intent, although some violence is thereby done to the words.")

The acceleration provision is needed to enable entry of a judgment for the full debt. *See* *Miller*, 566 So.2d at 1343 (reversing amount of judgment on the mortgage that lacked an acceleration provision and remanding for new judgment awarding "only past due payments and accrued interest as of the date of the original final judgment.") Yet, by allowing payment of only the arrearages any time up until judgment, the contract enables a court to enter judgment for the full debt at the end of the case *without* requiring the borrower to pay the full debt prior to judgment. Thus, acceleration operates merely as a mechanism for entry of a judgment for the full debt without making the full debt due prior to judgment.

F. The dismissal prior to judgment prevented the sole contractual purpose of acceleration from being fulfilled and rendered the acceleration moot.

As demonstrated above, the sole purpose and effect of acceleration in the mortgage contract is entry of a judgment for the full debt. Therefore, if a judgment for the full debt is never entered, acceleration has no effect. As no judgment can be entered after a dismissal, the dismissal of the Bank's foreclosure renders its acceleration of no effect and moot.

This understanding of the mortgage contract is evident in *Olympia*, which apparently involved the same type of mortgage. In *Olympia*, the court expressed that by voluntarily dismissing the suit, the lender "in effect decided not to accelerate payment on the note and mortgage at that time." *Olympia*, 744 So.2d at 866. This statement recognizes acceleration has no effect if the case is terminated without entry of a judgment. Similarly, as amply argued by U.S. Bank and the other *amici curiae*, at least 17 other cases have recognized acceleration has no persistent effect that survives the dismissal of a foreclosure case. See, e.g., Answer Brief, pp. 11-12.

The only court to hold otherwise was the Third District Court in *Beauvais*. Respectfully, the *Beauvais* court incorrectly assumed acceleration would survive a dismissal if the dismissal was without prejudice. This misunderstanding was based on the assumption that acceleration under the mortgage contract (apparently the

same standard form at issue here) makes the full debt immediately due and prevents future installments from coming due as scheduled. Both of those assumptions are contrary to the unambiguous contract terms, as demonstrated in Section III.E. above. Moreover, as the dismissal of U.S. Bank's foreclosure action was *with* prejudice, even the erroneous distinction in *Beauvais* would result in the parties here returning to their pre-acceleration status.

In this case, the dismissal rendered acceleration moot and left the parties in their pre-acceleration status because the sole purpose and effect of acceleration, enabling the trial court to enter a judgment for the full debt, was never fulfilled.

IV. Equity abhors forfeiture, which was the result of canceling the mortgage and awarding L. Bartram a debt-free house.

Mortgages are enforced in courts of equity. § 702.01, Fla. Stat. (2014); *Arsali*, 121 So.3d at 517. "Equity disregards all form and looks to the substance and essence of every matter." *Id.* at 518 (parenthetical quote). It abhors forfeiture. *Id*. at 517 (parenthetical quote).

A mortgage lien is not extinguished until the mortgage debt is actually satisfied. *Floorcraft Distributors*, 251 So.2d at 138. Even if judgment is recovered in an action on the note, that judgment does not affect the mortgage lien, and does not preclude a subsequent foreclosure action subjecting the property to the debt. *Lisbon Holding & Inv. Co. v. Village Apartments, Inc.*, 237 So.2d 197 (Fla. 3d DCA 1970), certiorari dismissed 241 So.2d 859.

U.S. Bank lent L. Bartram $650,000 with the mortgage as its security for repayment. The trial court's cancelation of the note and mortgage directly resulted in forfeiture of the Bank's assets and awarded L. Bartram an enormous windfall. L. Bartram has not a single equity in his favor. On the contrary, according to the note, the amount of the installment payments was $4,654.43 per month at inception, and L. Bartram has lived in the property without making a payment towards the debt in over nine years. Any analysis that results in him getting a debt-free house and U.S. Bank forfeiting its entire loan asset is in direct opposition to the principles of equity.

V. The Petitioners' position would create a public policy hazard.

In addition to the salutary public policy arguments made by U.S. Bank and the amicus parties supporting it, there is another particularly nefarious hazard that would result from the Petitioners' position. The Petitioners' position would create a powerful financial incentive for foreclosure defendants to purposely delay pending cases for five years and then seize on or create any plausible basis for a dismissal. This is not an incentive based on any legal right. It is an incentive based on the moral hazard of avoiding obligation and thereby securing an undeserved windfall.

This incentive would create an ethical quagmire for foreclosure defense counsel, who are professionally motivated to achieve the best possible results for

their clients but are ethically prohibited from taking action in litigation solely for purposes of delay. *See* Comment to Rule 4-3.2, R. Regulating Fla. Bar ("Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.")

This incentive would also create damaging uncertainty for the mortgage lending industry regarding lending in Florida. It would indicate to lenders their investments in Florida are subject to cancelation based on quirks of courtroom procedure rather than on the principled interpretation of their contracts. That uncertainty and risk would make home mortgage financing more difficult and expensive for even the most qualified Florida borrowers to obtain.

In addition to the legal arguments presented above, this moral hazard is a commanding public policy reason to approve the District Court's ruling below.

CONCLUSION

The District Court's ruling was correct. The mortgage lien was a valid encumbrance on the property and could not be removed by quiet title.

Pursuant to the entire contractual agreement between the parties, the exercise of the acceleration provision did not result in the full debt becoming due. That could not happen under the terms of the contract until entry of a final judgment.

Rather, the amount currently due at any time was based on how many payments had been missed – including monthly payments that came due after acceleration. The acceleration clause did not terminate the installment nature of the contract, either.

Instead, the acceleration provision is a mechanism that allows the court to provide full relief in a final judgment while preserving the borrower's ability to avoid foreclosure right up to the moment of final judgment. As this is a result of the unique language of these loan documents, other cases based on different loan documents may have different outcomes resulting from application of the same legal principles.

Finally, equity and public policy both militate against a forfeiture of the Bank's assets and a windfall to the borrower.

For these reasons and the other reasons outlined above, this Court should either affirm the District Court's ruling and decline to answer the question certified or answer the question certified in the negative.

S.C. CASE NO: SC14-1265
L.T. CASE NO: 5D12-3823

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that US Foreclosure Network's *Amicus Curiae* Brief complies with the font requirement set forth by Fla. R. App. P. 9.210, which governs appellate briefs. The foregoing Brief is typed in Times New Roman 14-point font and double-spaced with one-inch margins.

CERTIFICATE OF SERVICE

I FURTHER CERTIFY that a true and exact copy of the foregoing was e-mailed this 12th day of February, 2015, as indicated on the attached service list.

/s/ Jane E. Bond
Jane E. Bond, Esquire
Florida Bar No: 817244

/s/ Robyn R. Katz
Robyn R. Katz, Esquire
Florida Bar No: 146803

MCCALLA RAYMER, LLC
225 E Robinson St, Suite 660
Orlando, Florida 32801
Telephone: (407) 674-1850
Fax: (321) 248-0172
Email: mrservice@mccallaraymer.com
Counsel for USFN

/s/ David W. Rodstein
David W. Rodstein
Florida Bar No: 169536

PADULA HODKIN, PLLC
101 Plaza Real South, # 207
Boca Raton, FL 33432
Telephone: (954) 514-9276
Fax: (954) 827-3708
Email: rodstein@padulahodkin.com
charise@padulahodkin.com
Counsel for USFN

S.C. CASE NO: SC14-1265
L.T. CASE NO: 5D12-3823

SERVICE LIST

Kendall B. Coffey, Esquire
Jeffrey B. Crocket, Esquire
Daniel F. Blonsky, Esquire
Coffey Burlington, PL
service@coffeyburlington.com
kcoffey@coffeyburlington.com
jcrockett@coffeeyburlington.com
dblonsky@coffeyburlington.com
grouquel@coffeeyburlington.com
Counsel for Appellant, Lewis B. Bartram

Dineen Pashoukos Wasylik, Esquire
Dineen Pashoukos Wasylik, PA
dineen@jp-appeals.com
service@jp-appeals.com
Counsel for Appellant, Lewis B. Bartram

Thomas R. Pycraft, Jr., Esquire
Pycraft Legal Services, LLC
service@pycraftlaw.com
tom@pycraftlaw.com
Counsel for Appellant, Lewis B. Bartram

Michael A. Wasylik
Ricardo & Wasylik, PL
service@ricardolaw.com
Counsel for Appellant, Lewis B. Bartram

Lawrence C. Rolfe, Esquire
Brett H. Burkett, Esquire
Rolfe & Lobello, PA
lcr@rolfelaw.com
bhb@rolfelaw.com
Counsel for Appellant, Patricia Judge

Paul A. Bravo, Esquire
Jason Bravo, Esquire
P.A. Bravo, PA
service@pabravo.com
pabravo@pabravo.com
jbravo@pabravo.com
Counsel for Appellant, Patricia Judge
Counsel for Appellant, The Plantation at Ponte Vedra

T. Geoffrey Heekin, Esquire
Hunter Malin, Esquire
Catherine R. Michaud, Esquire
Heekin, Malin & Wenzel, PA
gheekin@jax-law.com
hmalin@jax-law.com
cmichaud@jax-law.com
Counsel for Appellant, The Plantation at Ponte Vedra

Joel S. Perwin, Esquire
Joel S. Perwin, PA
jperwin@perwinlaw.com
Counsel for Appellant, The Plantation at Ponte Vedra

Michael D. Starks, Esquire
James A. Talley, Esquire
Kelley Overstreet Johnson, Esquire
Eve A. Cann, Esquire
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
mstarks@bakerdonelson.com
jtalley@bakerdonelson.com
kjohnson@bakerdonelson.com
ecann@bakerdonelson.com
lcapplis@bakerdonelson.com
kdalton@bakerdonelson.com
Counsel for Appellee, U.S. Bank, NA, as Trustee

William P. McCaughan, Esquire
Steven R. Weinstein, Esquire
Stephanie N. Moot, Equire
Karen P. Finesilver, Esquire
Olivia Kelman, Esquire
K&L Gates LLP
william.mccaughan@klgates.com
steven.weinstein@klgates.com
stephanie.moot@klgates.com
karen.finesilver@klgates.com
olivia.kelman@klgates.com
maxine.lewis@klgates.com
Counsel for Appellee, U.S. Bank, NA, as Trustee

Shaib Y. Rios, Esquire
Curtis J. Herbert, Esquire
Brock and Scott PLLC
shaib.rios@brockandscott.com
curtis.herbert@brockandsoctt.com
Counsel for Amicus Curiae, American Legal and Financial Network

Elizabeth R. Wellborn, Esquire
Elizabeth R. Wellborn, PA
ewellborn@erwlaw.com
Counsel for Amicus Curiae, American Legal and Financial Network

Michelle G. Gilbert, Esquire
Jennifer Lima-Smith, Esquire
Gilbert Garcia Group, PA
mgilbert@gilbertgrouplaw.com
jlima-smith@gilbertgrouplaw.com
Counsel for Amicus Curiae, American Legal and Financial Network

Andrea R. Tromberg, Esquire
Gladstone Law Group, PA
atromberg@gladstonelawgroup.com
Counsel for Amicus Curiae, American Legal and Financial Network

Melissa A. Giasi, Esquire
Richard S. McIver, Esquire
Kass Shuler, PA
mgiasi@kasslaw.com
rmiciver@kasslaw.com
Counsel for Amicus Curiae, American Legal and Financial Network

Robert R. Edwards, Esquire
Jessica P. Quiggle, Esquire
Robertson, Anschutz & Schneid, PL
redwards@rasflaw.com
jquiggle@rasflaw.com
e-mail@rasflaw.com
Counsel for Amicus Curiae, American Legal and Financial Network

Major B. Harding, Esquire
John R. Beranek, Esquire
Ausley McMullen
mharding@ausley.com
jberanek@ausley.com
Counsel for Amicus Curiae, Baywinds Community Association

John R. Hargrove, Esquire
Hargrove Pierson & Brown, PA
jrh@hargrovelawgroup.com
eserve@hargrovelawgroup.com
Counsel for Amicus Curiae, Baywinds Community Association

John G. Crabtree, Esquire
George R. Baise, Jr., Esquire
Brian C. Tackenberg, Esquire
Crabtree & Associates, PA
jcrabtree@crabtreelaw.com
gbaise@crabtreelaw.com
btackenberg@crabtreelaw.com
Counsel for Amicus Curiae, Brevard County Legal Aid
Counsel for Amicus Curiae, Consumer Umbrella Group of Florida Legal Services
Counsel for Amicus Curiae, Florida Alliance for Consumer Protection
Counsel for Amicus Curiae, Florida Consumer Action Network

Sarah E. Mattern, Esquire
Brevard County Legal Aid, Inc.
sarahmattern@brevardlegalaid.org
Counsel for Amicus Curiae, Brevard County Legal Aid

Kimberly Sanchez, Esquire
Community Legal Services of Mid Florida
kimberlys@clsmf.org
Counsel for Amicus Curiae, Consumer Umbrella Group of Florida Legal Services

Peter Sleasman, Esquire
Florida Legal Services, Inc.
peter@floridalegal.org
Counsel for Amicus Curiae, Consumer Umbrella Group of Florida Legal Services

Alice Vickers, Esquire
Florida Alliance for Consumer Protection
alicevickers@flacp.org
Counsel for Amicus Curiae, Florida Alliance for Consumer Protection
Counsel for Amicus Curiae, Florida Consumer Action Network

Steven M. Siegfried, Esquire
Nicholas D. Siegfried, Esquire
Nicole R. Kurtz, Esquire
Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel, PA
ssiegfried@srhl-law.com
nsiegfried@srhl-law.com
nkurtz@srhl-law.com
Counsel for Amicus Curiae, Community Associations Institute

Todd L. Wallen, Esquire
The Wallen Law Firm, PA
todd@wallenlawfirm.com
Counsel for Amicus Curiae, Community Associations Institute

J.L. Pottenger, Jr., Esquire
Jerome N. Frank Legal Services Organization
j.pottenger@yale.edu
Counsel for Amicus Curiae, Jerome Frank Legal Services Organization

Peter Ticktin, Esquire
Timothy Quinones, Esquire
The Ticktin Law Group, PA
serv512@legalbrains.com
serv515@legalbrains.com
Counsel for Amicus Curiae, Bradford Langworthy
Counsel for Amicus Curiae, Cheri Langworthy

Robert M. Brochin, Esquire
Joshua C. Prever, Esquire
Brian M. Ercole
Morgan Lewis & Bockius, LLP
rbrochin@morganlewis.com
jprever@morganlewis.com
bercole@morganlewis.com
dthomas@morganlewis.com
Counsel for Amicus Curiae, Mortgage Bankers Association

James C. Sturdevant, Esquire
The Sturdevant Law Firm
jsturdevant@sturdevantlaw.com
Counsel for Amicus Curiae, National Association of Consumer Advocates

Lynn Drysdale, Esquire
Jacksonville Area Legal Aid, Inc.
lynn.drysdale@jaxlegalaid.org
Counsel for Amicus Curiae, National Association of Consumer Advocates

Thomas A. Cox, Esqurie
National Consumer Law Center
tac@gwi.net
Counsel for Amicus Curiae, National Consumer Law Center

John S. Mills, Esquire
Andew D. Manko, Esquire
The Mills Firm, PA
service@mills-appeals.com
jmills@mills-appeals.com
amanko@mills-appeals.com
Counsel for Amicus Curiae, Signature Land, Inc.
Counsel for Amicus Curiae, The Lynne B. Preminger Living Trust
Counsel for Amicus Curiae, Upside Property Enterprises, Inc.
Counsel for Amicus Curiae, Upside Property Investment, LLC