

IN THE SUPREME COURT OF THE STATE OF FLORIDA

SC17-1934

LTB:CASE NO: 4D17-2704 L.T.B. Case No. 502012CA010633XXXXMB

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**ARMANDO RIVAS**  
APPELLANT

VERSUS

**The Bank of New York Mellon, et al**

APPELLEE

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**ON APPEAL FROM THE PROCEEDINGS:**

THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY, FLORIDA AND 4DCA  
LTB:4D17-2704 Case No.: 2012CA010633XXXXMB

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**INITIAL BRIEF ON BEHALF OF  
ARMANDO RIVAS, APPELLANT**

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- Latin for "of one's own accord; voluntarily." Used to indicate that a court has taken notice of an issue on its own motion without prompting or suggestion from either party.
- As a general rule, where grounds for dismissal exist, an action is subject to dismissal on a court's own motion. A trial court has the power to dismiss an action sua sponte for want of prosecution, or failure to comply with the rules of civil procedure or a court's orders. A court may sua sponte enter a motion to dismiss for want of [jurisdiction](#) even though both parties have agreed to appear in the court.
- See, e.g., [Carlisle v. United States, 517 US 416 \(1996\)](#) and [Trest v. Cain, 522 US 87 \(1997\)](#).

Helmich v. Wells Fargo Bank

An appeal must be filed within thirty days of entry of the final judgment. This is jurisdictional and irremediable. A party’s motion for rehearing/reconsideration directed at denial of relief from judgment is unauthorized and will not toll the unwavering thirty-day time limit. A trial court may not sua sponte decide to revisit a matter a party could not otherwise request the court revisit. A court’s referral to a magistrate was an impermissible sua sponte grant of rehearing/reconsideration, and was not sufficient to toll Appellant’s time to appeal. Since the trial court was without authority to either rehear or reconsider its denial of relief from final

judgment, Appellant's notice of appeal, filed some six months after the court's denial, was untimely.

Select portfolio servicing, Inc VS. Robert Worobec, ETC, ET AL, case no: 5D14-4022

The trial court properly dismissed the foreclosure complaint against select portfolio servicing without prejudice too file a new foreclosure as the foreclosure was in violation of the automatic stay as the same circumstances what occur in this case and the final order was never appealed with in the 30 days jurisdictional period as required by law.

Citibank N.A VS. The estate of Joseph James case no: 1D15-2502

In this case the district court reversed and ordered the trial court too Gran the motion to dismiss and vacate the foreclosure judgment which was in violation of the automatic stay in direct conflict with the opinion issued by the 4DCA in this appeal that states the dismissal order was in violation of the automatic stay when it was in favor.

The bank of new York mellon VS. Jill Fitzgerald case no: 3D16-981

This case was dismissed and judgment in favor of the homeowner because the BONYM lacked standing to foreclose and was not a party who could have enforce the note and mortgage, this explains the scam and theft the attorneys and this bank do to homeowners and incompetent Judges.

Gaston Carty VS. Bank of America case no: 4D16-635

This is another perfect example of the continue ROBO signing and document manufacturing to continue stealing properties with the soul assistance of state court judges who are influenced by corruption and bribes.

G. David MILLER and Pool World, Inc., Appellants V. Gregory G. BALCANOFF, Appellee. No. 88-3156. September 5, 1990. /s/ G. David Miller 10/14/85 G. David Miller Date District Court of Appeal of Florida, First District.

S.W. BARDILL and Katherine Bardill, Appellants, v. Jack N. HOLCOMB and Dorothy Jean Holcomb, His Wife, Appellees. No. 756. September 10, 1968. Rehearing Denied November 18, 1968. District Court of Appeal of Florida. Fourth District

Suzanne Conry REED, Appellant, v. Don F. LINCOLN and Boriboon J. Lincoln, Appellee. No. 98-1410. April 16, 1999. Rehearing Denied May 18, 1999. District Court of Appeal of Florida, Fifth District.

Elizabeth spencer versus. Emc mortgage corporation case no: 3D11-0136 08/29/2012

**Grady H. SMITH, Plaintiff-Counter-Defendant-Appellant, v. The FEDERAL DEPOSIT INSURANCE CORPORATION, Defendant-Counter-Claimant-Third-Party-Plaintiff-Appellee, Marc Wahlquist; Maria Wahlquist, his wife; Number One Company, a dissolved Florida corporation, Third-Party-Defendants.No. 93-4686.**

**RATIGAN VS. CENTRAL MORTGAGE CASE 4D15-1087**

**MIGUEL TILUS VS. AS MICHA I LLC CASE NO:4D13-3616**

**MANUEL C PEREZ VS. DEUTSCHE BANK CASE NO:4D13-4812**

**TERRY A KELLY VS. BANK OF NEW YORK MELLON CASE:1D13-2778**

**JUSTIN FRIEDLE VS. BANK OF NEW YORK MELLON CASE 4D15-1750**

**AND ALL OTHER SUPPLEMENTAL AUTHORITIES.**

**STATEMENT OF JURISDICTION**

This Honorable Court has Jurisdiction over this matter pursuant to Fla.R.App.P.9.130(a)(5) because the Order Granting Appellees' motion for final judgment of foreclosure of the case below is a FINAL order of the Lower trial courts

This appeal is taken from the decision of the fifteenth Judicial Circuit court palm beach county of Florida to render a final order against the Appellant, ARMANDO RIVAS, (hereinafter known as "Appellant").

The final order of the lower Court entered on August 25, 2017 Granting Final Judgment of foreclosure in the matter which was entered erroneously granting the Appellee's Motion for final Judgment of foreclosure in this action to

foreclosed on appellants home based on fraud and unclean hands doctrine and subsequently stripping the Appellant of his lawful statutory rights afforded by the law in the illegal and fraudulent foreclosure of his property which was dismissed as final disposition and the final order never timely appealed and the trial court never retained Jurisdiction over the matter and the appellate court also had absolutely no jurisdiction and illegally without jurisdiction reversed those orders to harm the appellant all because the appellant defeated the appellees by utilizing all the legal options available under the law now come the 4DCA filing and publishing frivolous opinions which the appellant does not agreed and objects to their legal binding precedent and are legally VOID, all this is been done illegally against the appellant by all parties involved this includes the three panel judges of the 4DCA which Appellant consider their actions to be a crime on the bench as they should have not adjudicated and entertain and reverse an order that is VOID even the trial court recognize there erroneous and frivolous mistakes they did in reversing it, the attorneys defrauded Judge Lisa small in to frivolously granting them the order to vacate with frivolous arguments which she later recognized and corrected it. And now the district court of appeals erred and in conspiracy to harm the appellant issued the most frivolous opinions. All this is part of the Judicial system who in conspiracy with the notorious licensed criminal Attorney liar and perjurer Adam G Schwartz who illegally and with-out standing received a final judgment of

foreclosure this action is a crime and it's erroneous and the presiding Judge blocked the defendant from prosecuting it's case at the force trial and was always protecting the Apellees and shielding there fraud making this a conspirator of a criminal act and crime against the constitutional rights of the Defendant making him unfit for judgeship as his actions were illegal in an illegal and criminal judicial court system like the one were experiencing in the courts of florida, The courts have decided to take a stand of been tyrants and thinking they are the ones who run the show and our lives and that they can decide for us and our properties and future and this isn't so, all the properties that have been lost and stolen are because of our court systems involvement and allowing all the frauds because of some tyrant judges who decided they were Kings to do as they wish and violate the laws because we the people did not fight the system as it needs be fought and have allowed this corrupt system of ours to continue its corrupted course.

This Court's standard of review regarding an appeal from a Trial Court's Final order of foreclosure is de novo, and an appellate court must examine the record in the light most favorable to the non-moving party. *Princeton Homes, Inc. v. Morgan*, 38 So.3d 207, 208 (Fla. 4th DCA 2010). *See Craven v. TRG-Boynton Beach, Ltd.*, 925 So. 2d 476, 479 (Fla. 4<sup>th</sup> DCA 2006) (citing *Everett Painting Co. v. Padula & Wadsworth Constr., Inc.*, 856 So. 2d 1059, 1061 (Fla. 4<sup>th</sup> DCA 2003)); *see also Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966).

In reviewing the Order Granting Appellees' Final Judgment of foreclosure entered by the trial court and this Court must determine whether or not the trial court committed reversible error in granting Appellee's Motion for Final Judgment of foreclosure, and whether such error should allow for an immediate reversal and remand of the lower Court's decision as the Appellees and the presiding Judge both Joined forces and conspired illegally to harm the appellant and the case and the mechanism that have been used is illegal and frivolous and it is circumventing the laws and breaking it, all in conspiracy to assist thieves in to further committing more theft against the citizens and appellant this actions further continue hurting the trust of the public in our court systems and this court of law should rectified this error illegally made by the lower courts as the appellate court and trial court never retained or had jurisdiction in the first place to issue a final judgment of foreclosure when it was never timely appealed and the Plaintiff lacked standing and the original note and mortgage loan modification documents were never given to the trial Judge and verified as required by law and the note and mortgage were never securitized in to the pooling and servicing agreement which is the legal document that gives the Trust the legal ability to obtain standing and the loan was never in that Bunch of mortgage as this corporation was solely a sham empty trust to defraud investors and homeowners and other financial institutions with all these

sham corporations formed to simply defraud as it has been done in this case and tens of millions of others by these notorious thieves Appellees.

### **STATEMENT OF THE CASE AND FACTS**

This lower court action by Appellant against Appellees, to recover damages and penalties arising from a scheme to knowingly make, use, or cause to be made or used, a false record in connection to a mortgage loan and foreclosure action regarding the property located at 6568 Cobia Circle, Boynton Beach, Florida 33437 with legal description of:

**Lot74A. BOYNTON WATERS WEST I-A, according to the plat there of, as recorded in Plat thereof, as recorded in Plat Book 94, Page 110, of the Public Records of the Public Records of Palm Beach County, Florida.**

On August 7, 2006, ARMANDO RIVAS executed and delivered a Promissory Note and ARMANDO RIVAS AND LUZ C. RIVAS executed and delivered a Mortgage securing payment of the Note to the Payee named thereon to AMNET MORTGAGE, INC., D/B/A AMERICAN MORTGAGE NETWORK, INC.. AN UNLICENSED LENDER WHOS LICENSE WAS TERMINATED MONTH'S PRIOR TO THE TRANSACTION BEEN MADE.

The Mortgage was recorded on August 10, 2006, in Official Records, Book 20715 Page 0610; said Mortgage was illegally assigned to The Bank Of New York Mellon The Bank Of New York, As Trustee For The Certificate holders Of The CWALT, Inc., Alternative Loan Trust 2006-33CB, Mortgage Pass-Through

Certificates, Series 2006-33CB in Book 24782t Page 1766t of the Public Records of Palm Beach County, Florida.

On or about June 4, 2012, the Appellees filed a fraudulent foreclosure action in the Palm Beach County Circuit Court. Appellee knowingly and fraudulently presented false information in support of their foreclosure claim, filed fraudulent documents into Court records and Public Record knowing them to be fraudulent and intended to directly harm the Appellant by obtaining the foreclosure on Appellant's Property and the sale of said Property with no legal authority to do so.

MERS allegedly transferred its Note and the beneficial interest to BONYM.

MERS is not authorized to transfer a mortgage. Therefore, the Assignment of Mortgage dated September 27, 2011 is invalid and a Fraud upon the court and Appellant. see Roman Pino Vs. The Bank of new York mellon. And all other caselaw on the standing issue from this court as the Appellee did not have standing at the inception of the case filed in 06/04/2012 and as is required by law see Miguel tilus vs AS MICHAEL LLC case 4D13-3616 AND 4D15-1750 IT ISN'T SUFFICIENT for the Appellee to file a forged copy of a note and mortgage with a blank undated endorsement this equals to no standing period and this case must be reversed immediately and the Judgement vacated and the case dismissed with prejudice.

As shall fully be set forth below, Appellees knowingly and fraudulently presented false information in support of its foreclosure claim. Filed these fraudulent documents into Court record and Public Record knowing them to be fraudulent and intended to directly harm the Appellant by obtaining the foreclosure on Appellant's Property and the sale of said Property with no legal authority to do so.

As a result of this intentional fraud a justiciable issue now exists between Appellees and Appellant concerning the validity of the note and any legal transfer thereof and the unlawful sale of Appellant's Property through the named Appellees reliance on fraudulent documents and Robo Stamp documents to obtain the unlawful sale of Appellant's Property by fraud and forged documents and Appellee lack of standing as they never had standing from the inception of the dual tracked and illegal foreclosure lawsuit filed and illegally prosecuted by Akerman LLP a known robo signor and document forger law firm just as the notorious David Stern.

As a result of the fraud committed by the Appellees' the Appellant has suffered irreparable harms and financial losses as the Appellees are and always shall be liable to the Appellant for causing the Appellant irreparable financial harms as the Appellees are and always shall be the cause of the financial meltdown of 2008 which cause Appellant great financial losses and emotional distress, and

health issues as the theft that occurred was designed this way by these notorious criminals and thieves white collar degenerates wall street banksters.

As a result of the fraud that was and always shall be a financial crime and theft to the Appellant to defraud the Appellant out of its assets and homestead property by Appellees in the worst financial criminal scheme ever to go unpunished as everything that occur was done and continues to be done maliciously by the Appellees as they are in the business to scam homeowners out of their property, equities and steal everything that they are allow to steal by fraud unclean hands and caused the Appellant to fight hard to protect its assets from this financial criminals who have no standing and have never invested a dollar in the Appellant but manufactured fraudulent documents and forged the appellant note and mortgage to defraud other financial institutions and manipulate computer programs to create fraudulent documents and hire the bottom of the barrels scum attorneys to appear legitimate businesses but are nothing but licensed criminals debt collectors who think they are above the law cause they hold a license to steal and practice law in florida and these attorneys and appellee have violated rules of discoveries and deprived appellant of Due process with the assistance of corrupt Bias and prejudice Judges who are criminals in the Bench who are the tools that these criminals use to steal properties and wealth as it has been done to all of us.

## STATEMENT OF FACTS

On October 9, 2015, the Appellant was forced to file his Voluntary petition chapter 13 in the United States Bankruptcy Court, Southern District of Florida, due to the appellees and the trial court deprivation of appellant due process forcing appellant to go to trial without discoveries and attorney representation.

On October 9, 2015 the lower tribunal dismissed the case Sua Sponte under florida rule of civil procedures form 1.999 and directed the clerk to close the case as FINAL DISPOSITION DISPOSED BY THE JUDGE.

On December 28, 2015, Appellee filed a Motion to vacate order of dismissal, close to ninety days after the case was dismissed Sua Sponte as final disposition on the courts own motion and was never timely appealed by the Appellee.

On February 10, 2016, the lower tribunal erroneously Granted Appellee Motion to vacate the courts order of dismissal dated October 9, 2015.

On February 10, 2016, the Appellant filed a timely notice of Appeal of a none final order vacating a dismissal on a fraudulent foreclosure that lack standing.

On February 12, 2016, this court issued an order Sua Sponte order Appellant to file an initial brief and an appendix with in fifteen days of the order received under rule 9.130(a)(5) and rule 9.130(e)9.220.

On August 24<sup>th</sup> , 2017 the trial court forced trial upon appellant and forced him to defend it's interests in this illegal and wrongful foreclosure.

On August 25, 2017 the trial court issued an order of a final judgment of foreclosure against the appellant in violation of Due process and without standing.

On August 25, 2017 appellant filed this appeal in this honorable court.

On August 28, 2017 appellant filed it's emergency motion requesting a stay with the trial court pending appeal and it was denied.

On September 25,2017 the trial court and the attorneys tried to do a forced sale on the property despite this court been warned of the lack of standing the Appellees have.

### ISSUES

Appellant presents the following issues to the Florida Fourth District Court of Appeal:

(1) Did the lower tribunal Judge commit an error in his ruling issuing a Final Judgment of foreclosure when the appellant argued the judge and advised him that the Appellees lacked standing?

(2) Was the Appellant's Due Process violated as a result of the Trial Court's actions blocking the appellant from prosecuting the case and covering up theft and fraud against the appellant property?

(3) Did the trial court err in not adhering to the commonly held rule of law where it is mandatory for a litigant to prosecute a case and get all its discoveries and for the court not to cover up fraud as the courts are doing?

(4) Did the trial court err in not Granting the Appellant objection not to issue a final judgment of foreclosure in favor of the appellee but to issue it instead of the Appellant and dismiss the case with prejudice.

(5) Did the trial court commit irreparable damage by covering up the fraud been committed to the Appellant and protecting the criminals as it has been done.?

(6) Did the trial court commit error by not granting summary judgment in favor of the Appellant when the Appellees had no legal standing to foreclosed?

(7) Did the trial court err in not taking in to evidence and consideration the case laws as to the appellee lack of standing and still went ahead and issued a final Judgment of foreclosure?

(8) did the Trial court err in issuing a final Judgment of foreclosure when the appellee never gave to the trial court the original note and mortgage on the modified loan which superseded any note and mortgage issued at trial with undated stamps signed by well known robo-stamper and robo-signers?

(9) did the judge err in prosecuting the case when it was tainted with Bias and prejudice against the Appellant when there were seven motions filed to prevent

him from doing exactly what has been done in violation of due process and the law.?

(10) did the presiding judge erred in not disqualifying himself off the case and releasing the case back to the clerk to assign it to an impartial judge?

(11) did the trial judge commit reversal error in allowing the testimony of two witnesses who testified not having any sort of knowledge of the records and testifying that they never saw the original note and mortgage and they lacked knowledge of knowing if the note and mortgage were in possession of the plaintiff at time the foreclosure was filed in 06/04/2012 ?

(12) did the trial Judge commit reversal error in issuing the final Judgment of foreclosure when he was not acting in an impartial Judicial capacity but in a prejudice and Bias capacity with hate against the appellant?

### **SUMMARY OF THE ARGUMENT**

Trial courts possess authority under the Rules and rule 1.540(b) to hear evidence when allegations of fraud are raised and, upon proof of the fraud, to strike and vacate final Judgment of foreclosure. To be entitled to an evidentiary hearing, a motion to vacate must plead fraud with particularity and plead a basis for relief showing why the proceeding should be affirmed and the case dismissed with prejudice. Riva's Rule 1.120(a) and 1.140(b)(6) and fla.stat.sec.57.105 motion for

summary judgment pled that BNY Mellon, through its counsel, created, executed, and filed a fraudulent assignment of mortgage with the court which purports to transfer the subject mortgage lien to itself. The motion requested an evidentiary hearing to prove the fraud and it sought summary judgment in favor of the Appellant. The motion pleads fraud with specificity and shows a basis for relief; therefore, the trial court had authority under Rule 1.540(b) to hold an evidentiary hearing to consider Granting the motion for summary judgment and sanctioning BNY Mellon and issuing summary judgment in favor of the Appellant.

The trial court also had inherent authority to do so. Trial courts have inherent power to protect judicial functions and integrity. This includes the right (even the obligation) to deter fraud on the court—including the imposition of the ultimate sanction: Granting summary Judgment in favor of the appellant for not answering the complaint as ordered. Here, BNY Mellon filed the Motion for summary Judgment to consummate with the assistance of the trial court the fraudulent act upon the Appellant not having any fear of the consequences of filing a forged document intended to deceive the court. The trial court possessed inherent authority to stop BNY Mellon from using the Motion for summary Judgment as a shield for its continue fraud upon the court and Appellant and the Trial Judge wrongfully issued financial judgment of foreclosure to the Appellee without standing.

## STANDARD OF REVIEW

While the standard of review of a ruling on a motion to dismiss is generally abuse of discretion, the certified question before this Court is to be reviewed *de novo*. Whether the trial court had jurisdiction and authority under the rules or as a power inherent in its constitutional function is a legal question subject to *de novo* review. *Amerus Life Ins. Co. v. Lait*, 2 So. 3d 203, 205 (Fla. 2009); *Dep't of Revenue ex rel. Simmons v. Wardlaw*, 25 So. 3d 80, 82 (Fla. 4th DCA 2009). Further, Granting of a motion to dismiss without an evidentiary hearing is automatically an abuse of discretion as a matter of law unless the motion fails to allege a “colorable entitlement” to relief. *See Schleger v. Stebelsky*, 957 So. 2d 71 (Fla. 4th DCA 2007); *Stella v. Stella*, 418 So. 2d 1029 (Fla. 4th DCA 1982); *Robinson v. Weiland*, 936 So. 2d 777 (Fla. 5th DCA 2006) (evidentiary hearing requirement applies when fraud is asserted as a grounds for relief under Rule 1.540(b)); *Southern Bell Tel. & Tel. Co. v. Welden*, 483 So. 2d 487, 489 (Fla. 1st DCA 1986) (holding that the trial court erred because “where the moving party's allegations raise a colorable entitlement to rule 1.540(b)(3) relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required.”).

## ARGUMENT

*The Trial Court Had Authority to Hold an Evidentiary Hearing on the Motion for summary Judgment and not cover up the financial fraud as it did.*

Riva's motion and complaint alleges that BNY Mellon, through its counsel, manufactured evidence by creating, executing, and filing a fraudulently assignment of mortgage with the court.<sup>1</sup> An evidentiary lynchpin of the bank's case, this instrument was prepared by the bank's agents to transfer the mortgage and note to itself and falsely purports to do so before the case was filed.<sup>2</sup> Riva's motion explains the circumstances surrounding the fraud and its purpose, which was to backdate an assignment executed after the case was filed so that BNY Mellon could avoid dismissal under *Jeff-Ray Corp. v. Jacobson*, 566 So. 2d 885 (Fla. 4th DCA 1990) for lack of standing.<sup>3</sup> And recreate a chain of title when BNY mellon is not the original payer on the note and mortgage and BNY mellon has not provided the appellant with any evidence how it legally obtained standing to foreclose on the appellants property, as it stands BNY mellon and it's attorneys are trying to hide from the court the fraudulent assignment of mortgage and state they don't need to show the court or the appellant evidence of standing or how it obtained standing to foreclose on the note and mortgage and demand payment

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pino's Rule 1.540(b) Motion (A. 71-72).

<sup>2</sup> Assignment of Mortgage attached to Am. Complaint, dated June 4,2012.

<sup>3</sup> Riva's Rule 1.540(b) Motion (A. 73).<sup>3</sup>

from the appellant, when the BNY mellon failed to validate the debt and give appellant and the lower tribunal evidence of standing. When on the face of the complaint it fails to state a claim and explain how it got standing to foreclose on the note and mortgage, when the note and mortgage is a none negotiable instruments with all it's defects and fraud on the assignments of mortgages, and all the stamps on the note are from well known and documented robo signors and none have any evidence of the dates they were placed on the forged documents, and the BNY mellon and it's attorneys have failed to comply with the law and to show evidence of standing from the start of the foreclosure complaint, which was done with unclean hands and with fraud upon the court and appellant. See case law Pino vs the bank of new York mellon. And all other case laws named as authorities.

Such facts, if proven, cannot be explained or interpreted to be anything but fraud. Indeed, these allegations described conduct so scandalous that the Fourth District recommended that David J. Stern, P.A. be investigated by the Florida Bar and appellate counsel, Akerman Senterfitt, rightly sought to distance itself from the charges. But in this instant action Akerman was actually applauded for committing fraud and defrauding the Appellant and the trial court how erroneous the courts applaud criminals and steal from there citizens....

Riva's allegation of forgery squarely fits into the language of the rule as fraud, misrepresentation, or other misconduct of an adverse party. *See* Fla. R. Civ. P. 1.540(b)(3). The language of the rule should be given its plain meaning. *See Metcalfe v. Lee*, 952 So. 2d 624, 627-28 (Fla. 4th DCA 2007). Further, Florida case law already holds that a notice of voluntary dismissal or a motion to dismiss can be struck for fraud and vacate a final summary judgment of foreclosure. and the court has the powers to Sua sponte deny a motion to dismiss a case where fraud is alleged by a Plaintiff as was done from the beginning of the foreclosure action and is evident in the docket and evidence provided by the Plaintiff to the lower tribunal.

In *Select Builders*, the plaintiff filed suit to expunge an injunction that was allegedly improperly filed in the public records. 367 So. 2d at 1090. The court entered an order expunging the injunction. It later developed that the appellant may have perpetrated a fraud upon the trial court in obtaining the order expunging the document. *Id.* Accordingly, the trial court vacated its previous order. The defendants then moved for sanctions against the plaintiff, contending that it misled the court and committed certain procedural irregularities. The trial court ordered the plaintiff to take immediate steps to place the parties and the real estate in a status quo. The trial court also required the appellant to deposit certain monies that it received from the sale of the property to a third party. At this juncture, the

appellant filed its notice of voluntary dismissal, dismissing the action under Rule 1.420. Upon the defendants' motion to strike the voluntary dismissal, the trial court entered an order striking the plaintiff's notice of voluntary dismissal and retaining jurisdiction over the cause. *Id.*

The Third District affirmed the order granting defendants' motion to strike the voluntary dismissal of the plaintiff stating, "we find the court to be correct in striking the voluntary dismissal and reinstating the matter to prevent a fraud on the court." *Id.* at 1091.

1. The circumstances in this case are analogous to those in the *Select Builders* case, and Pino Vs. The Bank of new York mellon and the case were litigating.

The circumstances here are remarkably similar to those of the *Select Builders* case in that it has developed during the course of the litigaton that the Defendants may have committed a fraud on the court. After Pino brought the allegations of fraud to the attention of the court by way of a motion and sought discovery to prove the fraud, BNY Mellon, exactly like the plaintiff in *Select Builders*, filed a notice of voluntary dismissal seeking to avoid the consequences of its actions. Even more compelling here, the allegation of forgery in this case is more egregious than any wrongdoing described in *Select Builders*. Based on these allegations, the trial court had authority to hold an evidentiary hearing and, upon proof of those allegations, strike the Motion to dismiss and Grant Motion to vacate the Final Judgment of foreclosure in this case at hand.

*A. The Trial Court Also Has the Inherent Authority to Protect Its Own Integrity which has been completely lost and destroyed for allowing frauds and civil theft to continue in full force with the assistance of Judges like Judge Joseph Marx.*

Trial courts possess the inherent power to protect the function, dignity, and integrity of the judicial system. *Tramel v. Bass*, 672 So. 2d 78, 83 (Fla. 1st DCA 1996). Courts have “the right and obligation to deter fraudulent claims from proceeding in court.” *Savino v. Fla. Drive In Theatre Mgmt., Inc.*, 697 So. 2d 1011, 1012 (Fla. 4th DCA 1997). In using such authority, trial courts have considerable discretion to impose severe sanctions when a fraud has been perpetrated. *See e.g., Tramel*, 672 So. 2d at 83-85 (striking pleadings of defendant for intentional fraud on the court in submitting deliberately altered evidence); *Sotolongo v. Celebrity Cruises, Ltd.*, 49 So. 3d 862 (Fla. 3d DCA 2010) (affirming contempt order disqualifying attorney from cases).

The United States Supreme Court has recognized the inherent authority and obligation of the courts to protect litigants, and the judicial system itself, from dishonesty:

[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... The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.

*Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1119 (1st Cir. 1989). This sentiment is echoed throughout the Florida cases. See *Fitzgerald v. Fitzgerald*, 790 So. 2d 1216, 1217 (Fla. 2d DCA 2001) (recognizing the trial court's authority to override a notice of voluntary dismissal when fraud is committed); *Tobkin v. State*, 777 So. 2d 1160, 1164 (Fla. 4th DCA 2001) (recognizing fraud exception to right to voluntary dismissal); *U.S. Porcelain, Inc. v. Breton*, 502 So. 2d 1379, 1380 (Fla. 4th DCA 1987) (distinguishing *Select Builders* because there were no findings of fraud, deception, irregularities, nor any misleading of the court); *Durie v. Hanson*, 691 So. 2d 485, n. 2 (Fla. 5th DCA 1997) (denying a motion to strike a voluntary dismissal used to thwart a lack of prosecution and recognizing fraud exception); 1 Fla. Jur. 2d, Actions § 231; Henry P. Trawick Jr., *Trawick's Florida Practice & Procedure* § 21:2.

Courts even have the power to Sua Sponte dismiss a case with prejudice upon a showing that a party has committed fraud. *Taylor v. Martell*, 893 So. 2d 645, 646 (Fla. 4th DCA 2005) (affirming dismissal with prejudice where party fabricated documents). Dismissal for fraud is appropriate where "a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability to impartially adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." *Cox v. Burke*, 706 So. 2d 43, 46 (Fla. 5th DCA 1998),

*citing Aoude*, 892 F.2d at 1118. This is because “[o]ur courts have often recognized and enforced the principle that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve [its] ends.” *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998). Where a party perpetrates a fraud on the court which permeates the entire proceedings, dismissal of the entire case is proper. *Desimone v. Old Dominion Ins. Co.*, 740 So. 2d 1233, 1234 (Fla. 4th DCA 1999). *See also Papadopoulos v. Cruise Ventures Three Corp.*, 974 So. 2d 418, 419 (Fla. 3d DCA 2007) *citing Metro. Dade v. Martinsen*, 736 So. 2d 794, 796 (Fla. 3d DCA 1999) (Sorondo, J., concurring) (stating that “few crimes ... strike more viciously against the integrity of our system of justice than the crime of perjury”).

Indeed, this Court’s concern for protecting the integrity of the judicial process should be all the more heightened where, as here, BNY Mellon has invoked the court’s equitable jurisdiction. *Singleton v. Greymar Assocs.*, 882 So. 2d 1004, 1008 (Fla. 2004) (“[w]e must also remember that foreclosure is an equitable remedy...”); *see Knight Energy Servs., Inc. v. Amoco Oil Co.*, 660 So. 2d 786, 789 (Fla. 4th DCA 1995) (“[a] foreclosure action is an equitable proceeding which may be denied if the holder of the note comes to the court with unclean

hands or the foreclosure would be unconscionable.”). A decision upholding the rulings below will essentially repeal the equitable doctrine of unclean hands.

1. The inherent authority of a trial court is not dependent on the success of a party’s fraud.

BNY Mellon seemingly does not dispute the factual allegations of Riva’s motion. Rather, it focuses on one issue: whether its failure to succeed in committing fraud on the court precludes Rivas from having the trial court hear the fraud issue at an evidentiary hearing. It does not.

BNY Mellon’s position, and that of the court below, is that Rivas would have to show that the bank obtained “affirmative relief” through its fraud before the court would have authority to punish the wrongdoing—that attempted fraud does not support an exercise of the court’s inherent powers. For support, BNY Mellon cites a case that did not involve fraud, *Bevan v. D’Alessandro*, 395 So. 2d 1285 (Fla. 2d DCA 1981). In *Bevan*, the plaintiff voluntarily dismissed the case to avoid a dismissal for lack of prosecution. The *Bevan* court distinguished *Select Builders* in part because the plaintiff’s voluntary dismissal in *Bevan* did not “rise to the level of a fraud on the court under the circumstances” nor did the plaintiff receive affirmative relief. *Id.* at 1286.

From this, BNY Mellon ignores the fraud language and argues that striking or vacating the dismissal would be contrary to Florida law because it had not

previously obtained affirmative relief.<sup>4</sup> According to BNY Mellon, securing “affirmative relief” in this case would have meant successfully foreclosing on Riva’s home<sup>5</sup> (presumably with the use of its fraudulent assignment). Under this twisted logic, the very fact that the attempted fraud was exposed by defense counsel and Pro Se litigant is now a shield that protects BNY Mellon from any punishment.??? When the Appellees are now trying to Blind or use the court judges to ignore the frauds and commit civil theft against the Appellant by force because that’s exactly what is been done to the appellant by the corrupt criminal judge.

Aside from the fact that *Bevan* did not deal with fraud, there is no legitimate reason to apply a requirement that a wrongdoer succeed in deceiving the court or an opposing party before it may be punished. The reason the *Bevan* court was correct in denying the motion was because it could not have provided the relief requested by the movant. There is no discernable difference in the effect of a voluntary dismissal and a dismissal for lack of prosecution—both are without prejudice. See Fla. R. Civ. P. 1.420(a)(1), (e). Therefore, the *Bevan* court had the option of allowing the case to be dismissed without prejudice or to vacate the

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<sup>4</sup> Tr. of Proceedings held before Judge Joseph Marx.

<sup>5</sup> BNY Mellon’s Resp. to Riva’s Motions and objections. to Strike the Motion and to Grant a Dismissal with prejudice.

dismissal and hold a hearing for the purposes of dismissing the case, again with prejudice. The latter course would have been futile.

To the extent that the Third District may have implied in *Select Builders* that a new limitation—an affirmative relief requirement—should be grafted upon the inherent powers of the courts, this Court should reject the suggestion. None of the cases cited in *Select Builders* mention any affirmative relief requirement. See *Columbus Hotel Corp. v. Hotel Mgmt. Co.*, 156 So. 893, 897-98 (Fla. 1934); *Masilotti v. Masilotti*, 29 So. 2d 872, 873 (Fla. 1947); *Ryan v. Ryan*, 277 So. 2d 266, 272-73 (Fla. 1973). In fact, in *Ryan v. Ryan*, this Court recognized the inherent authority of a court to deal with fraud as a fundamental concept of equity which is necessary to protect the integrity of the judiciary:

[A] fraud upon the courts could no more be tolerated in this than in any other litigation. The courts will not knowingly become a party to contrivance or fraud... This is inherent in the judicial process. It is not limited to a future discovery of the fraud but may become apparent in the proceedings... , in which event the court should deal directly with it in such proceedings. In this there may be a direct fraud perpetrated . . . by misrepresentations, concealments or untruths, manifesting itself either in the course of the proceeding or at a later time. The courts will not indulge or reward falsehood and when such a purposeful inducement or fraud upon...the court is made to appear by the evidence... This recognition of such a fundamental concept of equity is necessary in order to preserve the integrity of the judiciary, lest it become a party to a fraud or allow a misuse of the judicial machinery. Not even under statutory imposition can an independent judiciary which is the ultimate protector of right and justice, be subjugated and undermined.

277 So. 2d at 272-73 (emphasis added). This Court has not limited the authority of the judicial branch to punish fraud on the court and it should not start now.

The notion that the court cannot strike the Motion to vacate dismissal unless BNY Mellon successfully defrauded the court is a “no harm, no foul” argument that should be soundly condemned. *See Cox*, 706 So. 2d at 46 (rejecting argument “that Cox should not be punished because she failed to deceive.”). That the efforts of defense counsel prevented the success of a fraudulent scheme is not a defense to a motion for dismissal for fraud and unclean hands. Just as an attempted crime is still a crime, an unsuccessful attempt to defraud the court is still sanctionable. “The failure of a party’s corrupt plan does not immunize the defrauder from the consequences of his misconduct.” *Aoude*, 892 F.2d at 1120.

Even assuming there is a requirement that BNY Mellon receive a benefit, such a requirement would be satisfied in this case. First, BNY Mellon’s procedural maneuver indefinitely blocked depositions that would have most likely exposed fraud—not only in this case, but in hundreds, if not thousands, of cases handled by its attorney, Akerman, LLP and all other criminal attorneys. Obstructing discovery in this way benefits BNY Mellon because, with the passage of time, memories become more attenuated and witnesses untraceable, making it more and more difficult to prove the fraud. Second, BNY Mellon escaped any punishment for attempting to defraud the court. It is continuing to use perjury and excuses to the

dismissal as a shield from its own bad acts to try and consummate further fraud upon the court and Appellant to create irreparable harms and civil theft.

If this Court were to adopt such a rule, it would be a clear signal to litigants, particularly plaintiffs, that presenting perjury and false evidence will have no consequences. If one is caught in such a transgression, he or she need merely forego the intended fruits of the falsehoods, dismiss the case and file another or continue with perjury—the only penalty being the refiling fee. Obviously, this would encourage deceit and fraud by the unscrupulous and criminal financial corporations who are only dissuaded from illegal behavior by the threat of retribution. Surely the banks would object to an analogous holding that bank robbery is not punishable so long as the robber returns the stolen money before the court hands down a conviction.

2. BNY Mellon's use of a voluntary dismissal to avoid punishment for wrongdoing is an abuse of the dismissal privilege and the use of a motion to dismiss to hide its fraud as it has done with the assistance of the court.

Plaintiff's right of voluntary dismissal was never intended as an escape hatch to avoid the consequences of its fraud. A plaintiff cannot be permitted to knowingly deceive the court and, when its transgressions are discovered, simply press the "reset button" and begin the litigation again as if it had done nothing wrong. *See e.g., Select Builders*, 367 So. 2d at 1091. Nor can voluntary dismissal be used as a sanctuary from which plaintiffs can hide from the consequences of

their wrongdoing. In short, the court's ability to protect its integrity does not end when a wrongdoer unilaterally decides to dismiss a case or better yet when the wrongdoer successfully attains a final judgment of foreclosure without standing to defraud the court and Appellant as it has done in this case with the assistance of the state court judges the penalty for such crimes should be punishable with jail time against all criminals including attorneys.

In balancing the inherent powers of the court against a plaintiff's right of dismissal, this Court should not draw a line that protects wrongdoers and blesses fraud on the court. Especially when this very Court has retained jurisdiction of voluntarily dismissed cases for reasons far short of fraud. *See State v. Schopp*, 653 So. 2d 1016, 1018 (Fla. 1995).

*Fraudulent Foreclosures Which Undermine the Integrity of the Court System Are Matters of Great Public Importance and the courts need to stop turning there heads the other way and start being tougher and harder on the fraudulent criminal actors instead of protecting them as the courts have done, becoming nothing less than a building of corruption liars and corrupt criminals.*

The problem of fraudulently executed documents in foreclosure cases is a statewide (even nationwide) issue that is not unique to BNY Mellon or this case. Indeed, the Fourth District in the Pino V The bank of new York mellon case recognized that very fact in certifying the question:

We conclude that this is a question of great public importance, as many, many mortgage foreclosures appear tainted with suspect documents.<sup>6</sup>

The veracity of banks and their chosen counsel is so often in question that this Court changed Florida Rule of Civil Procedure 1.110 to require that foreclosure complaints be verified. *In re Amendments to the Florida Rules of Civil Procedure*, 44 So. 3d 555, 556 (Fla. 2010). The Court stated the following four primary purposes for amending the rule:

(1) to provide incentive for the Plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded “lost note” counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by Plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.

*Id.* This point is even more powerful in this case where it is alleged that plaintiff’s agents created, executed, and filed fraudulently dated documents with the court. However, even the new rule will have no force or effect if it can be nullified by simply filing a notice of voluntary dismissal or simply stating that an assignment of mortgage isn’t required and that the plaintiff and counsel does not need to show any evidence of standing and or how they acquired the rights under the note and mortgage and state that a chain of title isn’t required.

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<sup>6</sup> Opinion of the Fourth District Court of Appeal, p. 6 (A. 229).

While this case arises in the context of a foreclosure—one of the hundreds of thousands of cases constituting what this Court has called a “significant crisis”<sup>7</sup>—the issue of fraud on the court clearly extends well beyond foreclosure. The protection of the integrity of the court system by discouraging fraudulent conduct during judicial proceedings is of paramount importance regardless of the nature of the matter being litigated.

The integrity of the civil litigation process depends on the truthful disclosure of facts. A system that depends on an adversary’s ability to uncover falsehoods is doomed to failure, which is why this kind of conduct [fraudulent concealment of facts] must be discouraged in the strongest possible way.

*Robinson v. Weiland*, 988 So. 2d at 1113, quoting *Cox*, 706 So. 2d at 47; see also *Channel Components, Inc. v. America II Electronics, Inc.*, 915 So. 2d 1278 (Fla. 2d DCA 2005).

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<sup>7</sup> *In Re: Task Force on Residential Mortgage Foreclosure Cases*, AOSC09-8 (March 27, 2009).

## CONCLUSION

The trial court had authority to conduct an evidentiary hearing on the issue of the fraud and uphold its order to compel the discovery to bring forth all the fraud been committed against the Appellant. Riva's objection and cross motions pled that BNY Mellon, through its agents, created, executed, and filed a fraudulent assignment of mortgage with the court and that the foreclosure complaint and the plaintiff lack standing. The allegations were pled with specificity and showed a basis for relief, the court committed irreparable harm by Granting the Appellee a final Judgment of foreclosure and not dismissing the case with prejudice and shielding the fraud upon the court and the appellant, perpetrated by the criminal organized white collar thieves and there criminal but coward attorneys prosecuting the matter and the fraud that are been shield and protected by the courts so that they can continue stealing property with unrighteous and un GODLY laws as its been done from the Florida supreme court all the way down to trial courts, this is a crime and this is not the reason we the people vote and pay taxes to pay for the public servants to serve us and protect us but instead those same corrupt politicians and servants placed in public office to protect the citizens are the ones hurting the citizens as it has been done to the Appellant a us citizen and a citizen of the state of Florida. The laws are well written for decades and were properly upheld and now the criminal attorneys and corporations have paid criminal judges to twist the and

interpret the laws and recreate unconstitutional laws to assist the criminals in further committing theft to the public and citizens, we have a degenerate Judicial system in the state of Florida, because of the degenerate Governor we have a well-known corrupt criminal, what else can one expect of his servants to be the same way and act the same way as is been acted and done all illegally.

The trial court also had authority to protect judicial functions and integrity. This includes the right and obligation to deter fraud on the court—including to deny a motion for final judgment of foreclosure and dismiss the case with prejudice. BNY Mellon filed the Motion to of dismissal to consummate the fraud without fear of the consequences of filing a forged document intended to deceive the court. The trial court should not be stripped of its inherent authority to stop BNY Mellon from using the dismissal rule as a shield for its fraud and or vacating and Grant BNY mellon further authority to commit fraud and perjury and civil theft as the trial court did.

Accordingly, the trial court's denial of Riva's Objection to the Motion for summary Judgment should be reversed and remanded for the lower tribunal court to Grant Summary Judgment in favor of the Appellant and close out the matter of the case with prejudice in favor of the appellant and against the appellees for lack of standing and fraud upon the court and unclean hands and issue the Appellant all equitable relief it sees just and proper.

Respectfully Submitted By:

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing Brief in the matter of ARMANDO RIVAS v. BANK OF NEW YORK MELLONS, et al, has been e-mailed, to the Attorney for the Appellee, The Bank of New York Mellon, Bayview Loan Servicing, LLC, Akerman LLP, William P. Heller, Adam G. Schwartz, [adam.schwartz@akerman.com](mailto:adam.schwartz@akerman.com) on this the 11<sup>th</sup> day of November, 2017.

e/signed  
ARMANDO RIVAS

**CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY that this brief was prepared with 14 point Times New Roman font as required by Fla. R. App. P. 9.201.

e/signed  
ARMANDO RIVAS

**STRICKEN**