

IN THE SUPREME COURT OF FLORIDA

Case No. SC17-1934

4th DCA Case No. 4D17-2704

LT Case No. 502012CA010633XXXXMB

ARMANDO RIVAS vs. THE BANK OF NEW YORK MELLON

Petitioner

Respondent

PETITIONER'S AMENDED BRIEF ON JURISDICTION

Dated: November 21ST, 2017

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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.

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 the district 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 v. AS MICHAII LLC.

SUMMARY OF ARGUMENT

The orders of denials of the 4DCA on case 4D17-2704 are all frivolously and in bad faith denied all to block the appellant from the equal protection of the law as this lower court Judges have all come in to agreement with the Appellee and the law offices of Akerman,LLP and it's criminal attorneys Adam G Schwartz, William P Heller, Nancy m Wallace and all other attorneys in conspiracy with the trial Judge Joseph Marx to strip and steal the Appellant out of his homestead Property and of an end result death to be killed by the known criminals Palm Beach county sheriffs deputy as the appellant will not vacate his home and abandoned his property with out said end result as everything that has been done to the Appellant has been criminally and intentionally structured by all this judges at the instructions of Adam G Schwartz and this has all been Admitted by Nancy M Wallace in a letter to the 4DCA judges stating that they should deny the motion to stay as it is what they all

want the ultimate goal to steal the property. With all the evidence and denied orders and the illegal and criminal stand of the trial court Judge and the Judges from the 4DCA it is abundantly clear that this judges are all in conspiracy to commit the criminal acts they have been doing for the last decade stealing property from we the people and shifting our wealth to the white collar criminal corporations and twist the laws as they wish and only protect those who they feel like giving the equal protection of the law and this is wrong and it's criminal to do as the law has no color, race, or religion, and the law favors no ne better then the other, but this judges are not following the law but acting above the law.

As is perfectly outlined in all the case laws cited this case suffers from all the defects and as the Appellee legally lacks standing to foreclosed and enforce the note and mortgage and since the Appellee lacks standing it is of no legal arguments if the Appellant was forced to default on the mortgage by criminal servicers increasing and forcing forced placed insurance to illegally steal property as they have done to the Appellant and millions of others with the assistance of criminal prejudice Judges through out the state of florida as the mortgage companies most are notorious criminals stealing from the citizens as it has been done to the Appellant.

It is a well settled law that filing a supposedly original note and mortgage after filing suit an undated blank endorsement on the note is insufficient to prove standing at the time the initial complaint was filed. See Bristol v. wells Fargo bank, nat'l ass'n

137 so .3d 1130 .1132(Fla.4DCA2014) and Miguel Tilus v. AS MICHA,LLC (Fla.4DCA 2015) reaffirming the well settled law on standing, as it is admitted by the Appellee in it opposition to the motion to stay and in the records filed as well as admitted in the letter dated august 30,2017 by Nancy m Wallace filed with the 4DCA case number 4D17-2704 all this legal defects which are governed by the 4DCA case laws which are the case laws governing this Appeal which demand an immediate reversal and for the Judgement and the foreclosure case to be dismissed with prejudice as a matter of law as is ordered on all the case cited this Honorable Court must intervene as a matter of law.

As the 4DCA is not upholding its own laws on the standing issues as they are well written and explained on each case cited. The courts actions are contradicting all the 17 case laws cited which all point out all the defects and lack of standing that this case has.

Given the conflict between the circuits, this Court should exercise its discretion under Fla. R. App. P. 9.030(a)(2)(A)(iv), and eliminate uncertainty within the circuits by resolving the apparent conflict. *See also Art. V. §(b)(3), Fla.*

Const.

ARGUMENT FOR JURISDICTION

THE FOURTH DISTRICT COURT OF APPEAL AND THE FIRST DISTRICT COURT OF APPEAL ARE IN CONFLICT AND THIS COURT SHOULD EXERCISE ITS JURISDICTION UNDER ART. V §(b)(3), FLA. CONST., AND FLA. R. APP. P. 9.030(a)(2)(A)(iv)

Article V, Section 3 (b)(3) of the Florida Constitution states, in relevant part, that the Court, “[m]ay review any decision of a district court of appeal... . . .that expressly and directly conflicts with another district court of appeal... . . .on the same question of law.” Similarly, Fla. R. App. P. 9.030(a)(2)(A)(iv) provides the Court with the discretionary power to review “decisions of district courts of appeal that... expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.”

I. The Order on Appeal and the Trial Court’s Ruling

In the underlying Foreclosure Case, BONYM filed a foreclosure lawsuit against Rivas. With out standing never filed the original note and mortgage. on it’s foreclosure complaint dated 06/04/2012 states that they are the holder of the note and mortgage by virtue of an assignment of mortgage which lastly gives them the rights to enforce the note and mortgage based on the pooling and servicing agreement which governs this shell corporation as not the PSA or the assignment of mortgage legally gives the Appellee any standing to enforce the note and mortgage as the note is note and mortgage or the loan are listed in none of the 300 plus pages in the certified PSA and the transaction listed on the fraudulent assignment of mortgage never occur this was all done and signed by ROBO SIGNERS to recreate a transaction that never took place all in bad faith and unclean hands to defraud the

court and the Appellant as it has been done and applauded by the trial judge Joseph Marx and the judges from the 4DCA in conflict with all governing case laws cited.

Here, the trial court below ruled that the Appellee had standing to foreclose based on the fraudulent assignment of mortgage, robo stamp allonges on the note from well known robo signers, and accepted a three pages copy of the governing loan modification agreement unsigned by the BANK and what it seems like a forged copy of the note and mortgage as I was not permitted to inspect its validity ever with an undated stamp and witnesses who had no knowledge of the transaction or when the note and mortgage were in possession of the trustee or attorneys as it was admitted in the bench trial and on the deposition taken on the notorious robo testifier Bryce Kolls a known perjurer in the industry as the so called corporate representative and other documents which are not certified and are all he said she said documents that can not be taken as series bank records or transaction records, all these defects aside from the final judgment of foreclosure which makes no legal finding of law and no memorandum of law was created to explain how the trial judge came to conclusion all these erroneous legal errors are made to defraud the Appellant homeowner out of his home by all the criminal perpetrators involved in this case which should be criminally investigated and prosecuted for said crimes and civil theft against a citizen.

II. Direct Conflict with the First, Second and fourth District Court of Appeal.

In stark contrast with the trial court rulings and the Orders on Appeal, the First, Second, and Third even the Fourth District Court of Appeal's reached the opposite conclusion which directly and expressly conflicts with the underlying courts' holdings below.

In Miguel Tilus v. AS MICHAEL, LLC (Fla. 4th DCA 2015) the court said where the plaintiff files the original note after filing suit, an undated blank endorsement on the note is insufficient to prove standing at the time the initial complaint was filed. Bristol v. Wells Fargo Bank, Nat'l Ass'n 137 So. 3d 1130, 1132 (Fla. 4th DCA 2014) moreover, an assignment of mortgage, even if executed before the foreclosure action commenced, is insufficient to prove standing. In this case the Appellee never filed the original note and mortgage at the inception of the foreclosure case which was filed in June 04, 2012 let alone the original or complete copies of the loan modification agreement which superseded the original agreement despite how the Appellee and its attorneys wish to twist the case law and the actual errors on the case which give them no standing as they lack standing from inception they cannot remedy the fact with twisted arguments as the record talk for themselves. See Terry a Kelly v. Bank of New York Mellon (Fla. 1st DCA 2015) the court said "where the plaintiff files the original note after filing suit, an undated blank endorsement on the

note is insufficient to prove standing at the time the initial complaint was filed. In *Marlene Ratigan v. Central mortgage company* (Fla. 4th DCA 2016) the court said “when the terms of an agreement are necessary for resolution of an issue Brought before a court, the failure to introduce the agreement itself into evidence violates the best evidence rule; without the agreement itself in evidence, testimony regarding the contents of the agreement is not permitted. West F.S.A. statute 90.952. in this case the appellee never filed the original note and mortgage let alone the original complete fully executed loan modification agreement which supersede the original contract violating the best evidence rule makes the final judgment of foreclosure VOID and unenforceable as the Appellee lacks standing and can not remedy this legal issue with twisted arguments and frivolous vague orders as is been done by the trial Judge Joseph Marx and the Appellate Judges from the 4thDCA this is all evident on the record and on the criminal evil act’s been committed by the Judges, the orders and docket speak of the evil wrong doing itself and what is been illegally done to the Appellant as a tort and wrongful foreclosure action with unclean hands.

All the actions of the 4th DCA appellate court and it’s orders are in contradiction to the case laws cited and are in direct conflict with all district court of appeals and it’s own case laws, wherefore this Honorable Supreme court must intervene on the evil and criminal actions been committed against the Appellant and find all equitable

remedy for the tort committed and been committed against the Appellants rights and any and relief it sees just and proper and equitable in the Appellants favor.

CONCLUSION

The Denial orders from the 4th DCA on the motion to stay pending Appeals and orders denying oral arguments for the purpose to argue all the points on the case laws cited on the standing issues conflict with all the district courts as is unconstitutional for the court to block a litigant from the equal protection of the law and for a court to discriminate against a citizen as it has been done against the Appellant to forcefully steal the Appellants home and transfer it to an unknown trustee who lack standing as a matter of law and where the record on appeal will talk for it self of the crimes committed against appellant by the appellee and the attorney Adam G Schwartz of Akerman LLP, as this appeal isn't frivolous and the judgment must be reversed as a matter of law there are seventeen case laws cited and there are hundreds if not thousands of case laws on the same issues

Given the conflict between the district courts on the same question of law, this Court should exercise its jurisdiction under Article V, § 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(iv) to resolve the conflict and provide certainty to litigants in this State.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2017, a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction was filed through the Court's electronic filing portal, and served (i) via email to those parties registered to receive email notices in this proceeding, and (ii) via First Class U.S.

Mail to those parties listed below.

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Estates of Boynton Waters West
Homeowners' Association, Inc.
c/o John S. Kennelly, R.A.
6849 Cobia Circle
Boynton Beach, FL 33437

Mortgage Electronic Registration
Systems, Inc., as nominee for
Countrywide Bank, FSB
c/o CT Corporation System, R.A.
1200 S. Pine Island Road
Plantation, FL 33324

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that I have complied with the font requirements of the Court and used 14-point Times New Roman, with no less than 1 inch margins.

/e/signed Armando Rivas

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