

**In the District Court of Appeal  
Fourth District of Florida**

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**CASE NO. 4D2024-2380**

**(Circuit Court Case No.)**

**2019-CA-015364**

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**DARRIN MCCRAY**

**Appellant,**

**v.**

**U.S. BANK NATIONAL**

**AND ASSOCIATES.**

**Appellees.**

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**ON APPEAL FROM THE JUDICIAL  
CIRCUIT IN AND FOR PALM COUNTY, FLORIDA**

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**INITIAL BRIEF OF APPELLANT**

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**THE MAILBOX DOCTRINE**

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**STATEMENT OF THE CASE AND FACTS**

U.S. National Bank Associates (the “BANK”) filed a verified complaint on December 03, 2019. On or about March 20, 2023, Appellant filed a Suggestion of Bankruptcy within the Florida Southern District Bankruptcy Court.

On or about April 02, 2024, a Clerk for the Florida Southern District Bankruptcy Court entered the following: Notice of Hearing (Re: 78 Combined Motion for New Trial, Altering or Amending a Judgment and Motion for Reconsideration and Certificate of Compliance with Local Rule 9073-1 (D) Pursuant to the Mailbox Doctrine. (Re: 74 Order on Request to Dismiss Case for Non-Compliance, 75 Order on Motion to Modify Plan) Filed by Debtor Darrin L McCray) Chapter 13 Hearing scheduled for 04/18/2024 at 11:00 AM Flagler Waterview Building, 1515 N Flagler Dr Room 801 Courtroom A, West Palm Beach, FL 33401. (Romaguera-Serfaty, Maria) (Entered: 04/02/2024).

On or about April 16, 2024, a Clerk for the Florida Southern District Bankruptcy Court entered the following: Plaintiffs Request for Judicial Notice in Support of its Combined Motion for New Trial, Altering or Amending a Judgment and Motion for Reconsideration and Certificate of Compliance with Local Rule 9073-1 (D) Pursuant to the Mailbox Doctrine. Filed by Debtor Darrin L McCray (Re: 78 Combined Motion for New Trial, Altering or Amending a Judgment and Motion for Reconsideration and Certificate of Compliance with Local Rule 9073-1 (D) Pursuant to the Mailbox Doctrine.). (Eisenberg, Randy) (Entered: 04/16/2024).

On or about May 13, 2024, a Clerk for the Florida Southern District Court entered the following: Request for Judicial Notice in Support of Appeal (Adversary Proceeding) Pursuant Mailbox Doctrine by Darrin McCray (cds) (Entered: 05/13/2024).

On or about August 14, 2024, the Trial Court issued a Final Judgement in a non-jury trial. On or about 15, 2024, the Trial Court issued an Order Lifting The Bankruptcy Stay. On or about September 12, 2024, Appellant filed an Emergency Verified Florida Rule 1.540 (b)(4) within the Trial Court. On or about September 13, 2024, the Trial Court denied the Emergency Verified Florida Rule 1.540 (b) (4).

## STANDARD OF REVIEW

Appellant, DARRIN MCCRAY A/K/A MCCRAY (hereinafter referred to as "Appellant"), proceeds *pro se*, moves this Court for review pursuant to Florida Appellant Rule 9.110 and 9.130 of the questions set forth herein. Appellant invokes the mailbox doctrine. This Court has discretionary jurisdiction to review these questions.

### WHETHER U.S. BANK HAS STANDING TO FORECLOSE

On or about December 03, 2019, U.S. Bank National Association filed a verified mortgage foreclosure complaint that does not comport with Florida Foreclosure Laws. For instance, U.S. Banks verified complaint does not bear a special endorsement, blank endorsement or an allonge which violates Florida § 673.2041(1).

The doctrine of standing certainly exists in Florida, but the doctrine of standing does not exist in the rigid sense employed in the federal system. "One element of the case or controversy requirement is that appellees, based on their complaint, must establish that they have standing to sue. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 2136-2137, 119 L.Ed.2d 351 (1992) (plaintiff bears burden of establishing standing)."

Consequently, Art. V, Sec. 5, Fla. Const. highlights that Florida circuit courts are tribunals of plenary jurisdiction. See *Department of Revenue v. Kuhnlein*, 646 So.2d 717 (Fla. 1994). Florida recognizes a general standing requirement in the sense that every case must involve a real controversy as to the issue or issues presented. See *Interlachen Lakes Estates, Inc. v. Brooks*, 341 So.2d 993 (Fla.1976).

Now, the Third District Court of Appeals outlined, "... To satisfy the requirement of standing, the plaintiff must show that a case or controversy exists between the plaintiff and the defendant and that such case or controversy continues from the commencement through the existence of the litigation." See *Ferreiro v. Philadelphia Indemnity Insurance Company*, 982 So. 2d 374 (Fla. 3rd DCA 2006).

It is important to remember that "A crucial element in any mortgage foreclosure proceeding is that the party seeking foreclose must demonstrate that it has standing to foreclose." *McLean*, 79 So.3d a 173.12. "Whether a party is the proper party with standing to bring an action is a question of law to be reviewed *de novo*." *Elston/Leetsdale, LLC v. CWCapital Asset Mgmt.LLC*, 87 So. 3d 14, 16 (Fla. 4<sup>th</sup> DCA 2012) (citation omitted). See Exhibit (1).

This Court has consistently held that standing to foreclose is determined at the time the lawsuit is filed and can be demonstrated by the filing of an assignment or the original note with a special endorsement in favor of the plaintiff or a blank

endorsement. *McLean*, 79 So. 3d at 173. A review of U.S. Bank’s verified mortgage foreclosure complaint will reveal that the bank lacks standing to foreclose. See (Exhibit 1).

Consequently, “A promissory note is a negotiable instrument.” *Deutsche Bank Nat’l Trust Co. v. Clarke*, 87 So. 3d 58, 60-61 (Fla. 4th DCA 2012). Where a document is a negotiable instrument, the best evidence rule, as codified, requires the production of the original. § 90.953(1), Fla. Stat. (2019) (“A duplicate is admissible to the same extent as an original, unless . . . [t]he document or writing is a negotiable instrument . . .”). “Therefore, a party who seeks to foreclose on a mortgage must produce the original note.” *Clarke*, 87 So. 3d at 61.

More importantly, a plaintiff’s lack of standing at the inception of the case is not a defect that may be cured by the acquisition of standing after the case filed” and cannot be established “retroactively by acquiring standing to file a lawsuit after the fact.” *Id.* (citation omitted). Thus, U.S. Bank’s lack of standing cannot be cured.

### **THE TRIAL LACKED SUBJECT MATTER JURISDICTION**

On or about August 13, 2024, Appellant filed a Request For Judicial Notice advising the Trial Court that he had an appeal pending in the Florida Southern District regarding his Adversary Proceeding. See (Exhibit 2). On or about August 14, 2024, the Trial Court entered a final judgement against Appellant. On August 15,

2024, the Trial Court issued an Order Lifting Stay For Bankruptcy And Directing Clerk To Change Case Status. See (Exhibit 3).

Here are the reasons the Trial Court lacked subject matter jurisdiction to conduct a non-jury foreclosure trial. First, “An allonge is a piece of paper annexed to a negotiable instrument or promissory note, on which to write endorsements for which there is no room on the instrument itself. Such must be so firmly affixed thereto as to become a part thereof.” See *Booker v. Sarasota, Inc.*, 707 So. 2d 886, 887 n.1 (Fla. 1st DCA 1998).

Although Florida’s Uniform Commercial Code does not specifically mention an allonge, the Code provides that “[f]or the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.” § 673.2041(1), Fla. Stat. U.S. Bank’s fraudulent foreclosure is without an allonge. See (Exhibit 1).

Moreover, “In order to prevail in a suit on a note and mortgage, the original note and mortgage must be introduced into evidence, or a satisfactory reason must be given for failure to do so.” *Fair v. Kaufman*, 647 So. 2d 167, 168 (Fla. 2d DCA 1994). Because an allonge is essentially part of the note, see *Isaac v. Deutsche Bank Nat’l Trust Co.*, 74 So. 3d 495, 496 n.1 (Fla. 4th DCA 2011). Therefore, it was necessary for U.S. Bank to file the original allonge along with the original note.

Following, per FL Statute 671.201(21), plaintiffs (most likely your lender or loan servicer) must meet two requirements in order to be considered owner or bearer of the Note: first, they must be in possession of the original instrument and second, the original Note must be endorsed, either in blank or in the plaintiff's name. U.S. Bank's foreclosure does not comport with this Florida Statute 671.201(21).

Next, a court's jurisdiction must be "lawfully invoked by the filing of a proper pleading." *Garcia*, 906 So. 2d at 1122 (emphasis added); *Lovett v. Lovett*, 93 Fla. 611, 631, 112 So. 768, 776 (1927) (emphasis added); *Paulucci v. General Dynamics Corp.*, 842 So. 2d 797, 801 n.3 (Fla. 2003); *Garcia v. Stewart*, 906 So. 2d 1117, 1122 (Fla. 4th DCA 2005). U.S. Bank's verified mortgage complaint is not a proper pleading that invokes a court's jurisdiction.

Finally, the Court in *Lovett* made it clear that the first aspect regarding the court's power over the class of cases, is "power conferred on the court by the sovereign ... to deal with the general abstract question." 93 Fla. at 629-30, 112 So. at 775. *Lovett* also explained the second aspect – lawful invocation of the court's jurisdiction – as a requirement to file a pleading or other document to actually commence the case. 93 Fla. at 630; 112 So. at 775.

Furthermore, U.S. Bank has failed to lawfully invoke the Trial Court's jurisdiction based on its improper pleading. On August 14, 2024, the Trial Court did not have jurisdiction to issue a final judgement. See *Venture Holdings &*

*Acquisitions Grp. LLC v. A.I.M Funding Grp., LLC*, 75 So. 3d 773, 776 (Fla. 4th DCA 2011) (citations omitted); See (Exhibit 3).

### **CONCLUSION**

Accordingly, this Court should reverse the final summary judgment based on U.S. Bank's lack of standing, and the trial court lack of subject matter jurisdiction. This Court should remand to the trial court for further proceedings.

Respectfully submitted,

  
DARRIN MCCRAY  
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### **EXHIBITS**

1. U.S. Bank National Association Verified Foreclosure Complaint
2. Request to take Judicial Notice
3. Order Lifting Bankruptcy Stay
4. Copy of U.S. Postal First-Class Stamp and Receipt of Purchase