

**IN THE DISTRICT COURT OF APPEAL - FOURTH DISTRICT, STATE OF FLORIDA**  
**110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401**

Isabel Howard, Beneficial and Equitable Title

Holder for ISABEL HOWARD E&T,

**Petitioner,**

v.

SPECIALIZED LOAN SERVICING, LLC, now

NEWREZ LLC DBA SHELLPOINT MORTGAGE SERVICING

**Respondent.**

CASE NO. - 4D2024-3160

L.T. No. - CACE22-017312

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## INITIAL BRIEF OF APPELLANT

### I. INTRODUCTION

Appellant, Isabel Howard, respectfully submits this Initial Brief in support of her appeal against the final order granting possession of her property to Adriana Culverhouse and the denial of her pending motions by the trial court in Case No. CACE22-017312. Specifically, Appellant challenges the lower court's failure to adequately address fraudulent foreclosure proceedings, lack of standing, due process violations, and judicial errors in denying all motions without justification or hearings.

### II. JURISDICTION

This Court has jurisdiction to hear this appeal pursuant to Florida Rules of Appellate Procedure 9.130 and 9.110. The November 6, 2024, Omnibus Order Denying Defendant's Pending Motions is appealable as a nonfinal order, as it denies motions raising substantial issues, including fraud, standing, and due process violations. The failure to provide an evidentiary hearing, to consider vital documents, and to address UCC filings and mortgage audit findings has resulted in a denial of justice and a final order of possession, all of which are subject to this Court's review.

### III. STATEMENT OF THE CASE AND FACTS

On November 14, 2024, Appellant filed two critical motions in the trial court:

1. Emergency Motion to Stay Enforcement of Writ of Possession and to Halt Foreclosure Proceedings Due to Fraud, Lack of Standing, and Failure to Prove Ownership.
2. Motion for Relief from Judgment, Foreclosure Sale, and Writ of Possession Based on Fraud, Lack of Standing, and Violations of Due Process and Court Jurisdiction.

These motions sought to prevent the Appellee, Specialized Loan Servicing (SLS), from continuing foreclosure actions, asserting that SLS lacked standing to enforce the mortgage due to fraudulent actions and improper assignment of the mortgage and note.

On November 19, 2024, Judge Gary Farmer issued a sweeping order denying all pending motions without providing any justification or explanation, depriving Appellant of an opportunity to present critical evidence, including UCC filings, mortgage audit reports, and expert witness testimony.

On November 19, 2024, Appellant filed a Motion to Reconsider and Set Aside Order Denying All Pending Motions, which was similarly denied. Subsequently, on December 5, 2024, Appellant filed a Notice of Appeal challenging the trial court's order denying all motions and the final judgment of possession granted to the alleged new owner, Adriana Culverhouse, despite significant fraud and procedural errors in the foreclosure process.

#### **IV. ISSUES PRESENTED**

1. Whether the trial court erred in denying Appellant's motions based on fraud, lack of standing, and violations of due process without holding a hearing or allowing Appellant to present critical evidence, including UCC filings and mortgage audits.
2. Whether the trial court's order granting possession to the alleged new owner is valid, considering the fraud in the foreclosure process and lack of standing by the Plaintiff (SLS).
3. Whether the trial court abused its discretion by denying Appellant's motions and failing to provide a clear explanation for its decisions, violating due process and the principle of fairness.

#### **V. STANDARD OF REVIEW**

This Court reviews trial court orders denying motions based on fraud and lack of standing under an abuse of discretion standard. However, when constitutional rights and due process violations are at issue, this Court reviews such matters de novo, without deference to the trial court's judgment.

#### **VI. ARGUMENTS AND AUTHORITIES**

1. **Fraud, Lack of Standing, and Failure to Prove Ownership**  
Appellee, SLS, failed to provide proof of standing to foreclose, and the court did not adequately address critical evidence presented by Appellant, including UCC filings and a mortgage audit. The UCC filings established that the note and mortgage were improperly assigned, and SLS does not have the right to foreclose under **UCC § 3-301 and UCC § 9-203. In Deutsche Bank Nat'l Trust Co. v. Beauvais**, the court held that a foreclosing party must demonstrate its standing by proving the proper assignment of the note. SLS failed to do so in this case.
2. **Due Process Violations**  
The trial court violated Appellant's due process rights under the **14th Amendment of the U.S. Constitution and Article I, § 9 of the Florida Constitution** by denying Appellant the opportunity to present evidence of fraud and standing, and by dismissing all motions without a hearing. In **Clearwater Fed. Sav. & Loan Ass'n v. Sampson**, the Florida Supreme Court ruled that due process requires a party to be heard on matters of fraud and standing before a judgment is rendered. The trial court's failure to provide such an opportunity was a direct violation of Appellant's rights.
3. **Abuse of Judicial Discretion**  
By denying all motions without justification, the trial court acted outside its discretion. In **Benedict v. Williams**, the Florida appellate court reversed a decision where the trial court failed to address allegations of fraud in a foreclosure case. The same logic applies here, as the trial

court's blanket denial of motions was not only procedurally improper but also constituted a clear abuse of discretion.

#### **4. Equity and Trust Laws**

In foreclosure cases involving fraud, courts may apply equity principles to prevent unjust outcomes. Appellant has presented credible evidence of fraudulent foreclosure, and under the Florida Trust Code, the court should protect the interests of the rightful owner by ensuring that only the true holder of the mortgage can foreclose. In **Bender v. Bender**, the court emphasized the importance of equity in ensuring that legal remedies do not result in unjust enrichment for a party lacking standing.

#### **5. Real Estate Laws and Contract Laws**

The Florida Statutes governing foreclosures (Section 702.015), as well as contract law, dictate that only the holder of the note or duly authorized assignee may foreclose. Since Appellee does not hold the mortgage note and the assignment was fraudulent, Appellant's property rights should not be disturbed. In **Bender v. Bender**, the court emphasized that once fraud is established, the foreclosure action cannot proceed without a valid transfer of ownership or a valid contract between the parties.

### **VII. CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that this Court reverse the trial court's orders denying Appellant's motions, and remand the case for further proceedings in accordance with due process, equity, and the law. Appellant further requests that the final judgment of possession in favor of Adriana Culverhouse be vacated, as the foreclosure proceeding was based on fraud, lack of standing, and violations of due process.

### **VIII. APPENDIX**

The appendix includes the following documents, as required by Florida Rule of Appellate Procedure 9.220:

Appellant may reference the following exhibits in support of her appeal:

- **Appendix A:** UCC-1 Filing # **2022-317-4042-1** and recorded at the Broward County with Instrument Number # **118515714**.
- **Appendix B:** UCC-3 Filing # 2024-303-7960-6
- **Appendix C:** Mortgage Audit Report with Instrument Number Filing# 210131926 E-Filed 11/01/2024 – Report is under “AFFIDAVIT OF INTEREST” on the Public Records. Also, audit report can be found on the trial court docket dated 11/01/2024 under the same title “AFFIDAVIT OF INTEREST” 65 pages. Filing# 210131926
- **Appendix D:** Expert Affidavits and Certifications Supporting Mortgage Audit and Fraud Claims. Documents can be found on the trial court docket dated 11/01/2024 under the same title “AFFIDAVIT OF INTEREST” Pages 48 – 51. Filing# 210131926
- **Appendix E:** Order to issue WRIT OF POSSESSION granted on 11/05/2024 to ADRIANA CULVERHOUSE (Aiding and Abetting Fraudulent Purchaser). See document filed on trial court's docket as of 11/05/2024 – 2 pages.

- **Appendix F:** Omnibus Order denying defendant's PENDING MOTIONS filed on trial court's docket as of 11/06/2024 – 2 pages
- **Appendix G:** ORDER DENYING ALL PENDING MOTIONS filed on trial court's docket as of 11/19/2024 – 2 pages

**These exhibits have been recorded and filed in the appropriate county records and are referenced here to support the allegations made in this appeal.**

Dated this ...26th.....day of December 2024.

Respectfully submitted

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Isabel Howard, Beneficial and Equitable Title Holder for ISABEL HOWARD E&T,

Without Prejudice, Without Recourse, ARR

Address for Appellant is Private and only can be contacted via email to [isarova@live.com](mailto:isarova@live.com), and or court e-portal, and or via phone at 754 274-9868

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### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on ..... 26th of December .....2024....., a true and correct copy of the foregoing was furnished via email to:

David Rosenberg, Esq.

Robertson, Anschutz, Schneid, Crane & Partners, PLLC

6409 Congress Ave., Suite 100, Boca Raton, FL 33487

Telephone: (561) 241-6901

Facsimile: (561) 997-6909

Email: [drosenberg@raslg.com](mailto:drosenberg@raslg.com) - [FLmail@raslg.com](mailto:FLmail@raslg.com)

Attorneys for Appellee

CC//

ADRIANA CULVERHOUSE  
2640 NE 10TH AVENUE, Apt #105  
POMPANO BEACH, FL 33064

ADRIANA CULVERHOUSE  
525 N OCEAN BLVD#923  
POMPANO BEACH, FL. 33062  
PRIMARY EMAIL:  
[ADRIANA8578@BELLSOUTH.NET](mailto:ADRIANA8578@BELLSOUTH.NET)

ADRIANA CULVERHOUSE  
3500 SW NATURA BOULEVARD # 301  
DEERFIELD BEACH, 33441

**CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the font and word count requirements of **Florida Rule of Appellate Procedure 9.210**.



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Isabel Howard, Beneficial and Equitable Title Holder for ISABEL HOWARD,  
Without Prejudice, Without Recourse, ARR