

## BRIEF OF APPELLANT

DATED: September 2nd, 2024

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- Deutsche Bank National Trust Company v. Beauvais, 138 So. 3d 519 (Fla. 4th DCA 2014). (lis pendens issues)
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- Smith v. Smith, 737 So. 2d 641 (Fla. 1st DCA 1999)
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- John Crescent, Inc. v. Schwartz, 382 So. 2d 383, 385 (Fla. 4th DCA 1980)
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### **I. Introduction:**

This brief is submitted in support of the appeal from the Circuit Court's orders concerning a foreclosure action:

1. Order Denying Appellant's Motion to Vacate Default and Final Judgment
2. Default and Final Judgment of Foreclosure
3. Order Denying Appellant's Amended Answer and Counterclaim
4. Order Granting Appellee's Motion to Reschedule Foreclosure Sale and Prohibiting Clerk of Court from Canceling Foreclosure Sale Without Written Court Order

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- 1- Denying the Motion to Vacate Default and Final Judgment
- 2- Issuing the Default and Final Judgment of Foreclosure
- 3- Rejecting the Amended Answer and Counterclaim
- 4- Granting the Motion to Reschedule the Foreclosure Sale and Prohibiting Clerk of Court from Canceling Foreclosure Sale Without Written Court Order

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The Appellant respectfully requests that this Court reverse the orders of the Circuit Court and remand the case for further proceedings. The Appellant seeks an opportunity to present their evidence and defenses fully, consistent with principles of fairness and due process.

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1. Order Denying Appellant's Motion to Vacate Default and Final Judgment
2. Orders for Default and Final Judgment of Foreclosure
3. Order Denying Appellant's Amended Answer and Counterclaim
4. Order Granting Appellee's Motion to Reschedule Foreclosure Sale and Prohibiting Clerk of Court from Canceling Foreclosure Sale Without Written Court Order

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**EXHIBIT E** – (6/28/2022) 2<sup>nd</sup> Affidavit and validation of debt request

**EXHIBIT F** – (8/25/2022) 2<sup>ND</sup> Request to Validate the alleged debt

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**EXHIBIT L – (7/10/2024)** Appellant’s complaint with the Florida Attorney General Complaint in pending status.

**EXHIBIT M – (7/3/2024)** Appellant’s complaint with the Better Business Bureau (BBB) Complaint in pending status #ID 21937191

**IN THE DISTRICT COURT OF APPEAL - FOURTH DISTRICT, STATE OF FLORIDA**

**110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401**

ISABEL HOWARD,

CASE NO. - 4D2024-2065

Appellant(s)

L.T. No. - CACE22-017312

v.

SPECIALIZED LOAN SERVICING, LLC

Appellee(s).

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**INITIAL BRIEF OF APPELLANT**

**I. Introduction**

This appeal challenges a final judgment of foreclosure, which is fundamentally flawed due to multiple instances of fraud, misrepresentation, lack of standing, violations of due process, and procedural errors, including an unjust default judgment. These errors have collectively led to an inequitable outcome. The Appellant, Isabel Howard, as the Beneficial and Equitable Title Holder for ISABEL HOWARD, seeks to reverse the orders denying relief and to obtain equitable remedies based on the evidence and legal arguments set forth herein.

The Appellant seeks to reverse following orders:

1. Order Denying Appellant's Motion to Vacate Default and Final Judgment
2. Orders for Default and Final Judgment of Foreclosure
3. Order Denying Appellant's Amended Answer and Counterclaim
4. Order Granting Appellee's Motion to Reschedule Foreclosure Sale and Prohibiting Clerk of Court from Canceling Foreclosure Sale Without Written Court Order

**II. Statement of the Case and Facts:**

1. Background

On November 28, 2023, the Circuit Court issued a Default and Final Judgment of Foreclosure against the Appellant. This judgment was entered despite significant evidence of fraud and procedural errors. On August 13, 2024, the court also issued several orders that the Appellant now challenges, including denials of motions to vacate and amendments to pleadings, and restrictions on the foreclosure sale process.

## 2. Key Facts

- **Mortgage Audit Findings:** A comprehensive audit revealed that the mortgage was fraudulently transferred and that the chain of title was incomplete, undermining the legitimacy of the foreclosure process.
- **Court Orders:** The court's refusal to vacate the default and judgment, denial of the Appellant's amended pleadings and counterclaims, the decision to reschedule the foreclosure sale and Prohibiting Clerk of Court from Canceling Foreclosure Sale Without Written Court Order despite ongoing disputes and legal challenges are the subject of this appeal.

### III. Summary of the Arguments

The Appellant asserts that the Circuit Court erred by:

- 1- **Denying the Motion to Vacate Default and Final Judgment:** The Appellant demonstrated that the judgments were obtained through fraudulent means and misrepresentation. The court's refusal to vacate these judgments prevented the Appellant from presenting crucial evidence and defenses.
- 2- **Issuing the Default and Final Judgment of Foreclosure:** The foreclosure judgment was based on an incomplete chain of title and fraudulent documentation, violating the Appellant's due process rights.
- 3- **Rejecting the Amended Answer and Counterclaim:** The court's rejection of these pleadings prevented the Appellant from asserting valid defenses and counterclaims, which were essential to contesting the foreclosure.
- 4- **Granting the Motion to Reschedule the Foreclosure Sale and Prohibiting Clerk of Court from Canceling Foreclosure Sale Without Written Court Order.** The court's decision to reschedule the sale and blocked Appellant from filing Bankruptcy despite ongoing disputes and legal challenges was prejudicial and hindered the Appellant's ability to seek bankruptcy relief.

### IV. Grounds for Appeal - Detailed Arguments:

#### 1. First Ground: Fraud and Misrepresentation

##### **Basis:**

The foreclosure proceedings are critically compromised by fraud and misrepresentation, which have materially affected the court's findings and the final judgment. Specifically, the absence of a recorded Assignment of Mortgage, issues related to the securitization of the note, and the improper filing of the Lis Pendens significantly undermine the legitimacy of both the foreclosure process and the final judgment.

##### **Support:**

#### **a. No Recorded Assignment of Mortgage - Chain of Title and Ownership Issues:**

Florida Statutes Chapter 701, Section 701.02 requires that an assignment of mortgage be recorded in the public records to be valid against subsequent purchasers and to support a foreclosure action. The failure to record such an assignment renders the foreclosure invalid.

**Case Law:**

Harris v. Federal National Mortgage Association, 166 So. 3d 130 (Fla. 4th DCA 2015). This case emphasizes that a plaintiff must prove standing by demonstrating that they held both the mortgage and the note at the time the foreclosure was filed. Although the case does not explicitly address the absence of a recorded Assignment of Mortgage, it underscores the necessity for the foreclosing party to establish a clear chain of title and ownership. The ruling highlights that the failure to provide evidence of ownership through proper documentation and recorded assignments impacts the validity of the foreclosure action. Therefore, the absence of a recorded assignment in this case undermines the plaintiff's standing and the legitimacy of the foreclosure.

**Exhibit A: Bloomberg Mortgage Audit Report – Page 17, Section 3: Foreclosure** -Recorded Events on the Loan Including Foreclosure Issues and Securitization - Chain of Mortgage Possession - Chain of Note Possession:

-Note Holder: Paramount Residential Mortgage Group, Inc. (Lender)

-Issuing Entity: Fannie Mae REMIC - Trust 2018-070

**Audit Note:** "No recorded Assignment of Mortgage exists at the time of this report (dated 05/10/2024). Such a document must be filed and recorded prior to the commencement of a valid foreclosure proceeding."

There is no evidence of a perfected transaction involving the transfer, assignment, or endorsement of the mortgage and note from the original lender, PRMG Inc., to subsequent entities, including SunTrust/Truist Bank (the bank to which the Appellant was making monthly payments) and the debt collector "servicer," Specialized Loan Servicing LLC (Appellee). The Appellee is not a party to the original transaction and is registered merely as a debt collector, retaining the title of "servicer." The only recorded transfer is from PRMG Inc. to the Federal National Mortgage Association, during which the mortgage and note were separated, and the note was securitized.

**b. Securitization Issues:**

Federal Rule of Evidence 1002: Requires that the original document is the best evidence of its content. When a note is securitized, the plaintiff must provide clear evidence of the transfer and proper standing to foreclose.

Florida Rule of Civil Procedure 1.115: Mandates that a party seeking foreclosure must prove they hold the original note or a properly endorsed copy. Failure to document the securitization process affects the plaintiff's standing.

**Case Law:**

CitiMortgage, Inc. v. T&D Ventures, Inc., 177 So. 3d 1225 (Fla. 5th DCA 2015). The court found that issues with securitization and improper documentation undermined the appellee's standing to foreclose. The ruling reinforces that plaintiffs must demonstrate they hold both the mortgage and the note to validly

initiate foreclosure proceedings. Failure to provide evidence of proper transfer and standing due to securitization issues invalidates the foreclosure action.

The securitization of the note directly impacts the plaintiff's standing to enforce the mortgage. According to *CitiMortgage, Inc. v. T&D Ventures, Inc.*, the court held that improper documentation and issues with securitization undermined the appellee's standing. When a mortgage is securitized, the chain of ownership and the transfer of the note must be properly documented. The plaintiff must show that they possess the original note or a properly endorsed copy and provide evidence of the proper transfer and standing. In this case, the failure to document the securitization process means that the plaintiff could not prove they held the note at the time of filing, thereby affecting their standing to foreclose. The lack of proper documentation related to the securitization process undermines the validity of the foreclosure action and reveals a fundamental flaw in the proceedings.

**Exhibit: A - Bloomberg Mortgage Audit Report – Pages 2, Section 2: Securitization; and Page 17, Section 3: Foreclosure – Recorded Events on the Loan Including Foreclosure Issues and Securitization – Recorded Chain of Mortgage Possession – Chain of Note Possession.**

### **c. Lis Pendens Issues**

Florida Statutes Chapter 48, Section 48.23: Requires that a Lis Pendens be recorded to provide notice of a pending legal action affecting real property and must be supported by a valid underlying legal claim to be enforceable.

Florida Rule of Civil Procedure 1.110(b)(1): Requires that a complaint affecting real property include a concise statement of the nature of the action and a description of the property affected.

#### **Case Law:**

*Deutsche Bank National Trust Company v. Beauvais*, 138 So. 3d 519 (Fla. 4th DCA 2014). The court invalidated a Lis Pendens due to issues with the underlying mortgage assignment, emphasizing that a Lis Pendens must be supported by a proper legal claim. This case supports the argument that a Lis Pendens filed without proper assignment or standing is ineffective and fraudulent.

#### **Exhibit: A - Bloomberg Mortgage Audit Report – Pages:**

Page 17: Section 3: Foreclosure – Recorded Chain of Mortgage Possession – Chain of Note Possession – No recorded Assignment of Mortgage at the time of this report. Such a document must be filed and recorded before a proper foreclosure can proceed.

Page 34: Transaction History Issues – Fraudulent filing of Lis Pendens

On November 23, 2022, a Lis Pendens was recorded in the Official Records, Broward County, Florida, as instrument number 118533663.

Page 35: No Assignment of Mortgage

Page 1, Line 1: Isabel Howard acquired a loan on the property on August 30, 2018, in the amount of \$117,800.00. This primary active loan, recorded on January 7, 2022, is the subject of this report.

Page 1, Line 2: Invalid foreclosure action. Lis Pendens was recorded without an Assignment of Mortgage.

Foreclosure action dependent upon an Assignment of Mortgage.

**Argument:**

The absence of a recorded Assignment of Mortgage, issues with the securitization of the note, and the improper filing of the Lis Pendens collectively undermine the validity of the final judgment. According to *Harris v. Federal National Mortgage Association*, the foreclosing party must prove they are the rightful holder of both the mortgage and the note, demonstrating a clear chain of title and ownership. This ruling highlights the necessity for proper documentation and recorded assignments to validate a foreclosure action. The failure to provide evidence of ownership through proper documentation impacts the legitimacy of the foreclosure. Given that the plaintiff failed to properly document the chain of title, ownership, and the Lis Pendens process, the foreclosure was pursued without the necessary legal standing. Consequently, the final judgment should be reconsidered, and appropriate relief should be granted based on these fundamental procedural and legal deficiencies.

**Exhibit: A - Bloomberg Mortgage Audit Report – Page 17, Section 3: Foreclosure – Recorded Events on the Loan Including Foreclosure Issues and Securitization – Recorded Chain of Mortgage Possession – Chain of Note Possession: Lis Pendens filed November 23, 2022, without a recorded Assignment of Mortgage.**

**2. Second Ground: Lack of Standing**

**Basis:**

The Appellee lacked the proper standing to initiate or continue the foreclosure action against the Appellant. The failure to demonstrate valid ownership of the mortgage note or proper assignments undermines the authority to foreclose on the property. The Appellee failed to prove possession of the original note or provide evidence of its right to foreclose, thus undermining the legitimacy of the foreclosure.

**Support:**

The mortgage audit and records reveal that the Appellee could not establish proper ownership of the mortgage note. Key findings from the audit include:

**a. Absence of Proper Assignment:**

The audit indicates that the Appellee did not present any valid or properly recorded assignment of the mortgage note from the original lender, Fannie Mae, or any subsequent holders. This lack of assignment is critical because, under UCC § 3-203, a person can only enforce a negotiable instrument if they are the holder of the instrument or have acquired it through proper endorsement and delivery.

**(Exhibit A - Bloomberg Mortgage Audit Report – Page 17: Recorded Chain of Mortgage Possession – Chain of Note Possession – Issues)**

**b. Fraudulent Documentation:**

The audit reveals that the Appellee's documentation related to the mortgage assignment was fraudulent or invalid, including improperly executed or missing assignment documents. This contravenes Florida

Statutes § 702.015(1), which requires that the foreclosing party prove ownership and standing to foreclose.

**c. Lack of Documentation:**

The Appellee failed to provide proper documentation showing the transfer or assignment of the mortgage note from the original lender to themselves or their predecessors, in violation of the requirements set forth in Florida Statutes § 702.015(2) and UCC § 3-301.

**Argument:**

Without establishing proper standing, the court lacked jurisdiction to issue the foreclosure judgment. Under U.S. Supreme Court precedent, such as *Household Finance Corp. v. Catoe*, 306 So. 2d 542 (Fla. 1st DCA 1974), a party must demonstrate clear and lawful ownership or authority to pursue foreclosure. In this case, the Appellee's inability to prove standing renders the foreclosure action fundamentally flawed and void. The court's jurisdiction and authority to adjudicate the foreclosure were contingent upon the Appellee's valid standing, which was not established. Therefore, the foreclosure judgment should be deemed void.

**(Exhibit A - Bloomberg Mortgage Audit Report – Page 18: Report Summary by Mortgage Audit Experts)**

**3. Third Ground: Violations of Due Process**

**Basis:**

The due process rights of the Appellant were violated throughout the foreclosure proceedings. These violations include, but are not limited to, improper service of process, denial of the opportunity to present evidence, witnesses, or defenses, and the wrongful denial of motions critical to the defense.

**Support:**

The Appellant was not properly served with notice of the foreclosure proceedings, which deprived her of adequate notice and an opportunity to respond. Under *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), due process mandates that notice must be reasonably calculated to inform interested parties of the action against them. In this case, the Appellee failed to serve the Appellant in person and did not demonstrate that reasonable efforts were made to effectuate personal service, as required by law. Instead, the Appellee hastily resorted to service by publication, which constitutes a failure to act in good faith.

**a. Failure to Demonstrate Diligent Efforts:**

The Appellee did not make reasonable efforts to personally serve the Appellant and failed to provide a detailed affidavit outlining their attempts. Instead, the Appellee misrepresented their efforts in the affidavit, claiming to have made multiple contacts with unidentified individuals and relatives without offering any proof of names, addresses, phone numbers, or specific locations visited. Additionally, the Appellant was not residing at the property address due to safety concerns, as she was dealing with a stalker living next door who had attacked her on several occasions. The Appellant was, in fact, involved in two other legal cases related to this stalker and the condominium where she resides.

(See trial court docket for the Affidavit with misrepresentation of attempts to contact the Appellant: **"Affidavit of Diligent Search and Inquiry" filed on 1/16/2023**)

(See legal cases showing Appellant dealing with other legal and delicate matters: **DVCE 20002488, DVCE 23-4769, and DVCE 23-004769**)

**Argument:**

These violations of due process rights are critical as they directly impact the fairness and validity of the foreclosure proceedings. The lack of proper service and the denial of the Appellant's right to present a defense, evidence, and witnesses deprived her of a fair hearing, as guaranteed under the Due Process Clause of the U.S. Constitution. This procedural unfairness warrants the reconsideration of the foreclosure judgment and the granting of appropriate relief.

**b. Denial of Opportunity to Present Evidence:**

The Appellant was denied the opportunity to present critical evidence and witnesses during hearings. Specifically, motions requesting to present a mortgage audit and witness testimony were denied, violating the right to a fair trial as established in *Goldberg v. Kelly*, 397 U.S. 254 (1970), where it was held that procedural due process demands an opportunity to be heard at a meaningful time and in a meaningful manner.

**(EXHIBIT C – Email Thread from Judge Marina Garcia-Wood's Assistant, Melinda Fleming, and the Appellee, Demonstrating the Blocking and Denial of the Appellant's Ability to Present Evidence and Witnesses)**

The email correspondence, which occurred off the official docket records, shows the Appellant's attempt to schedule a hearing in person for her motions according to the procedures outlined by the Judge's assistant.

**c. Wrongful Denial of Motions:**

The Appellant's motions to vacate the default judgment and to present evidence were unjustly denied. This denial occurred despite the submission of supporting legal authority and evidence showing that the motions were meritorious. The refusal to consider these motions is inconsistent with *Jones v. Flowers*, 547 U.S. 220 (2006), which emphasizes the necessity for fair procedures before depriving an individual of property.

- **Chronology of Appellant's Motions and Court Actions:**

12/19/2023 – Appellant filed a motion for Default and Final Entry of Judgment pursuant to Florida Rule of Civil Procedure 1.540(b)(4). Outcome: Denied.

01/11/2024 – Appellant filed a motion titled "Answer and Affirmative Defenses to Plaintiff's Verified Amended Complaint for Foreclosure of Mortgage." Outcome: Motion was never heard.

01/18/2024 – Appellant filed a Motion to Dismiss for Lack of Standing and a Motion to Compel Production of Plaintiff and Plaintiff's Counsel's Foreign Agent Registration Statements. Outcome: Denied.

01/29/2024 – All motions were denied without being heard. Appellant was not afforded the opportunity to present new evidence or even speak during the 2-3 minute Zoom hearing.

02/09/2024 – Appellant filed a motion objecting to all previous denials. Outcome: Denied.

03/19/2024 – Appellant filed a motion objecting to the rescheduling of the sale. Outcome: Denied.

04/04/2024 – Appellant's motion to Vacate Final Judgment and Sale was denied, and the sale was granted to the Appellee via court order.

04/04/2024 – Appellant filed an appeal.

04/29/2024 – Foreclosure sale was scheduled for 05/23/2024.

05/01/2024 – Appellant filed a motion to stay proceedings due to lack of standing and newly discovered evidence of fraud and misrepresentation. Outcome: Denied.

05/21/2024 – Appeal dismissed.

06/24/2024 – Appellant filed an Amended Answer and Counterclaim, along with a Motion to Vacate Default and Final Judgment due to fraud. Outcome: Denied.

07/11/2024 – Appellee filed a motion to Reschedule Foreclosure Sale and for an Order prohibiting the Clerk of Court from canceling future foreclosure sales without a written court order. Outcome: Granted by the Judge.

08/08/2024 – Appellant filed a Supplemental 2 – Amended Answer and Counterclaim raising questions regarding standing and authority. Appellee failed to respond. Outcome: Motion denied by the court.

08/12/2024 – At the hearing, the court denied all of Appellant's motions and instead granted all motions from the Appellee. Appellant's motions were never heard, and new evidence was blocked from being presented by Judge Marina Garcia-Wood during the hearing.

**Argument:**

These due process violations have led to an unjust final judgment. The inability to properly respond to the foreclosure action, coupled with the wrongful denial of opportunities to present a defense, compromised the fairness of the proceedings. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee the right to due process, which includes fair notice and a fair opportunity to be heard. The procedural errors and unfair treatment observed in this case undermine the integrity of the judicial process and necessitate rectification to ensure a just resolution. Under Florida Statutes § 702.015, and UCC Article 3 regarding the validity of instruments, it is imperative to address these violations to correct the final judgment and uphold the principles of due process.

**4. Fourth Ground: Procedural Errors Leading to an Unjust Judgment**

**Basis:**

The foreclosure judgment was unjustly granted due to procedural errors, specifically the denial of motions based solely on defaults, without proper consideration of the substantive evidence of fraud. These errors include the court's failure to address the serious allegations of fraud, leading to an unjust foreclosure judgment.

**Support:**

**a. Failure to Address Substantive Fraud Claims:**

The Appellant's motions contained substantial evidence of fraud that, if properly considered, could have significantly altered the outcome of the case. Under Florida law and the Uniform Commercial Code (UCC), particularly UCC § 1-103(b), courts are required to integrate principles of law and equity when applying the UCC, which includes addressing allegations of fraud. The court's disregard for these substantive claims undermines the equitable basis upon which the legal system is built, resulting in an unjust foreclosure.

**(EXHIBIT A – Bloomberg Mortgage Audit Report – Pages):**

**Page 2: SECTION 1: TRANSACTION DETAILS** – This section reveals that only the Original Lender and Trustee/Investor were involved in the transaction, highlighting the absence of the Appellee's interest as a legitimate party.

**Pages 5, 7, and 14: MERS SEARCH RESULT ON MIN# 1004247-1000195062-5 (as of May 10, 2024)** – The loan is registered in the MERS database, showing Specialized Loan Servicing LLC as Servicer and Fannie Mae as Investor. This confirms that the Appellee was merely a servicer and not an interested party in the original transaction.

**Page 6: FANNIE MAE REMIC SEARCH RESULT ON BORROWER'S LOAN** – This section documents that the Borrower was assigned CUSIP# 3136B3BQ2, indicating the securitization of the loan into the Fannie Mae REMIC Trust 2018-070, which calls into question the Appellee's legal standing in the foreclosure process.

**Page 11: LEGAL MATTERS** – The audit reveals that key documentation, including the PSA and Prospectus Supplement, is missing or unavailable to the public. This lack of transparency severely undermines the legitimacy of the foreclosure process, as it questions the legal standing of the entity attempting to foreclose. The lower court's failure to address these discrepancies led to a flawed judgment.

**Page 12: How Fannie Mae Works** – Even after selling the mortgage-backed securities to investors, Fannie Mae continues to own the underlying mortgages, complicating the standing of any other party claiming foreclosure rights.

**Page 17: SECTION 3: FORECLOSURE** – This section details the recorded Chain of Mortgage and Note Possession. Notably, there was no recorded Assignment of Mortgage at the time of this report, which is a prerequisite for a proper foreclosure process.

**Page 18: REPORT SUMMARY** – The summary highlights that the Note was sold, transferred, assigned, and securitized into the Fannie Mae REMIC Trust 2018-070 with a settlement date of September 28, 2018. Additionally, a Lis Pendens was recorded on November 23, 2022, in Broward County, Florida, without an Assignment of Mortgage being recorded.

**Page 29: FIDELITY INVESTMENT SEARCH RESULT FOR CUSIP# 3136B3BQ2** – This search result shows that the Borrower's CUSIP# is an Investment Bond actively being traded as of May 10, 2024, further complicating the standing of the Appellee.

**Page 30: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS (MERS) ANALYSIS** – The analysis indicates that MERS has no legal authority and is a non-interest party.

**Page 33: Securitization Issues** – The Note and Mortgage were separated (bifurcation issues), with no record of Assignments to either the Sponsor or Depositor as required by the Prospectus Agreement.

**Page 34: TRANSACTION HISTORY** – This section provides details of the loan acquisition and the subsequent invalid foreclosure action, dependent on an unrecorded Assignment of Mortgage. The history shows that the Lis Pendens was recorded without an Assignment of Mortgage, further invalidating the foreclosure action.

**Argument:**

The procedural errors and the court's failure to address the substantive evidence of fraud have led to an unjust final judgment. According to the Fifth and Fourteenth Amendments to the U.S. Constitution, due process guarantees the right to fair notice and a fair opportunity to be heard. The denial of these rights, coupled with the failure to consider critical evidence, compromises the integrity of the judicial process. Under Florida Statutes § 702.015 and UCC Article 3 regarding the validity of instruments, it is imperative to address these violations to correct the final judgment and uphold the principles of due process.

**b. Reliance on Procedural Defaults:**

The trial court's decision to deny motions based on procedural defaults, without considering the critical evidence of fraud, contradicts the fundamental intent of U.S. law, which prioritizes substantive justice over mere procedural technicalities. In cases where fraud is alleged, procedural rules should not be employed as a shield to avoid addressing the real issues at hand. The U.S. Supreme Court, in *Pepper v. Litton*, 308 U.S. 295 (1939), has emphasized that **equitable principles** must guide the court's discretion, particularly in instances of fraud.

**c. Improper Denial of Equitable Relief:**

The trial court's refusal to grant equitable relief by considering the evidence of fraud directly contravenes Florida's legal framework, which seeks to prevent unjust enrichment and ensure that judgments are based on the true merits of the case. The court's strict adherence to procedural defaults, without addressing the fraud claims, violates the spirit of equity that both Florida law, Florida Statutes Section 86.011 and case law like *Rosen v. Zoberg - Garcia v. Santa Maria Resort, Inc.* and U.S. law uphold, Federal Rule of Civil Procedure 60(b) case law like *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*

**Argument:**

The procedural errors observed in this case, particularly the court's failure to consider the substantive evidence of fraud, have resulted in an unjust foreclosure judgment. Florida law, UCC provisions, and U.S. legal precedents emphasize that courts must look beyond procedural defaults when significant issues such as fraud are at stake. The court's reliance on procedural technicalities has compromised the integrity of the judicial process, leading to a judgment that does not reflect the true nature of the case. To correct this injustice and uphold the principles of equity, it is necessary to revisit the foreclosure judgment and ensure that the allegations of fraud are thoroughly examined.

**5. Fifth Ground: Default (9/11/2023) and Judgment (11/23, 2023)**

**Basis:**

The default entered on September 11, 2023, and the final judgment entered on November 23, 2023, against the Appellant were improper due to excusable neglect and the court's failure to adequately consider the Appellant's meritorious motions to vacate both the default and the judgment.

**Support:**

**A. Excusable Neglect:**

The Appellant demonstrated excusable neglect in their failure to respond timely, which was due to circumstances beyond their control, including the complex nature of the case and issues with service of process. Florida Rule of Civil Procedure 1.540(b) provides grounds for relief from a judgment, including excusable neglect.

The Appellant asserts excusable neglect in failing to respond to the Plaintiff's complaint, in alignment with the principles set forth in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993). This case underscores the interpretation of "excusable neglect" as an elastic concept, accommodating circumstances that might not strictly be beyond the control of the litigant, analogous to the Appellant's situation.

**B. Meritorious Defense:**

The presence of a meritorious defense is essential in vacating a default judgment. In *Smith v. Smith*, 737 So. 2d 641 (Fla. 1st DCA 1999), the Florida court highlighted the necessity of demonstrating a meritorious defense to justify setting aside a default judgment. The Appellant asserts excusable neglect due to significant financial hardship and distraction from critical legal matters, challenging the validity of the claimed debt and disputing the court's jurisdiction.

**1- Preoccupation with Other Legal Matters:**

The Appellant has been enduring a challenging situation involving stalking and harassment charges against a male neighbor residing in the same condominium. This ongoing issue has caused the Appellant significant stress, creating an environment where she feels unsafe and has been unable to reside at her property for extended periods. The Appellant has faced continued stalking, harassment, and assaults by this neighbor and has filed stalking claims on three separate occasions in 2020 and 2023 (**See cases DVCE 20002488, DVCE 23-4769, and DVCE 23-004769**).

Additionally, the Appellant is engaged in an ongoing civil lawsuit against the Homeowners Association for the condominium where her property is situated. This lawsuit addresses the association's alleged failure to conduct a criminal background check on the neighbor, who has a documented history of violent crimes involving deadly weapons, drug addiction, alcoholism, and mental health issues (**See Case: CACE-21-008270**).

**2- Financial Hardship:**

The Appellant's financial difficulties, exacerbated by a combination of her pressing legal issues unrelated to this case (the stalker situation and the civil case against the condominium), and the inability to work from home, as she felt unsafe in her own property, justify the Appellant's inability to respond promptly to the Plaintiff's actions.

- a. Due to a reduction in monthly income, the Appellant has encountered difficulties in meeting her financial obligations in a timely manner.
- b. The Appellant has faced challenges in securing full-time employment and has only been able to obtain temporary, seasonal, or part-time work to meet basic needs.
- c. The Appellant has been forced to work outside her home due to daily harassment and terrorization by the stalker neighbor, who has a long history of drug abuse, drug dealing, domestic violence, and other violent crimes, including a recent assault with a deadly weapon in 2018.

### **C. Demonstration of Diligence and Good Faith Efforts**

Despite facing significant financial hardships and pressing legal matters, the Appellant has consistently demonstrated diligence and good faith in addressing the fraudulent foreclosure action. As established in *Zamora v. J.P. Morgan Chase Bank, N.A.*, 2012 WL 3155397 (S.D. Fla. 2012), the court recognizes the importance of a party's sincere efforts to comply with legal procedures, even under financial constraints. The Appellant has made every reasonable effort to adhere to court procedures, file necessary motions, and present the case within the bounds of the law. These actions reflect a genuine commitment to resolving this matter, and the Appellant respectfully requests that the court consider this diligence and good faith in its deliberations.

Foreclosure proceedings are governed by principles of equity, which require the court to account for the Appellant's significant financial hardships and preoccupation with other pressing legal matters. As established in *John Crescent, Inc. v. Schwartz*, 382 So. 2d 383, 385 (Fla. 4th DCA 1980), "The failure of a party to take the required steps necessary to protect its own interests cannot, standing alone, be grounds to vacate judicially authorized acts to the detriment of other innocent parties. The law requires certain diligence of those subject to it, and this diligence cannot be lightly excused."

Additionally, while the Appellee argues that the Appellant did not act with due diligence by waiting over three weeks to file the Motion to Vacate Default and Default Final Judgment, the Appellant's actions were hindered by the extraordinary circumstances outlined above. Prior to the foreclosure filing, the Appellant had repeatedly requested the Appellee to provide evidence proving their lawful or equitable authority and legal standing to collect the alleged mortgage debt. The Appellee failed to produce or rebut the Appellant's challenges regarding the alleged debt, including proof of transfer and assignment, evidence of being the holder or holder in due course, proof of ownership of the mortgage, and evidence that the Plaintiff possessed the original promissory note.

#### **The Appellant has proof of all documents sent to the Appellee before foreclosure action, as follows:**

- -On June 1, 2022, the Appellant sent an Affidavit of Truth outlining all violations committed by the Appellee under 15 U.S. Code, Subchapter V – Debt Collection Practices, and 12 CFR-1026.13(d)1. The Appellee failed to respond to the affidavit. **(EXHIBIT D)**
- -On June 28, 2022, the Appellant sent a letter requesting the Appellee to validate the alleged debt. The Appellee failed to respond to the Appellant's specific allegations. **(EXHIBIT E)**
- -On August 25, 2022, the Appellant sent another correspondence refusing the Appellee's offer to contract and enclosed the prior affidavit and validation of debt requests. The Appellee failed to respond to the Appellant's specific allegations and questions. **(EXHIBIT F)**

- -On September 3, 2022, the Appellant filed a complaint with the Consumer Financial Protection Bureau (CFPB) to obtain a response from the Appellee. On September 15, 2022, the Appellee responded with false statements alleging that MERS is the transferee and has the authority to pursue the foreclosure action. **(EXHIBIT G)**
- -On November 8, 2022, the Appellant sent a Conditional Acceptance to the Appellee, accepting their offer only if the Appellee produced factual evidence proving their legal standing to pursue a foreclosure and collect the alleged debt. The Appellee failed to respond to the Appellant's specific allegations and questions. **(EXHIBIT H)**
- -On November 13, 2022, the Appellant filed a UCC-1 financial statement claiming a security interest, asserting that she is the real party in interest and the Beneficial and Equitable Title Holder for ISABEL HOWARD E&T. **(EXHIBIT I)**
- -On February 28, 2023, the Appellant sent the Plaintiff a final Notice to Cease and Desist, as the Plaintiff failed to respond to the Appellant's specific allegations. The Plaintiff continued to harass the Appellant, attempting to hold her responsible for a fraudulent debt. **(EXHIBIT J– Notice to Cease and Desist)**

#### **D. Improper Denial of Motion to Vacate Default Judgment**

The court denied the Appellant's motion to vacate the default judgment on January 23, 2024, and set the sale for January 30, 2024, without considering the merits of the Appellant's arguments or the underlying circumstances. The Appellant presented valid defenses, including fraud and lack of standing, which should have been considered before the default judgment was entered.

The Appellant respectfully asserts that the trial court erred in denying the Motion to Vacate the Default Judgment without proper consideration of the merits of the defenses presented. The Appellant has raised substantial and valid defenses based on findings of fraud, lack of standing, and other significant irregularities uncovered in a comprehensive mortgage audit report. These defenses should have been fully evaluated before any default judgment was entered, in accordance with both legal and equitable principles.

##### **1. Lack of Standing Due to Improper Assignment**

The mortgage audit report reveals that the Appellee lacks standing to enforce the mortgage due to the absence of a valid assignment or transfer of the original note and mortgage. Under Florida law, a party must demonstrate proper standing at the time of filing a foreclosure action (see *McLean v. JP Morgan Chase Bank, N.A.*, 79 So. 3d 170 (Fla. 4th DCA 2012)). In this case, the audit shows that there was no recorded transfer or assignment from the original lender to the current Appellee, and Fannie Mae, a previous party involved, no longer claims ownership of the property. This lack of standing should have precluded the entry of a default judgment and warrants the vacating of such judgment.

##### **Note:**

The Appellee introduced witnesses who testified under oath that the Appellee is the holder of the original promissory note. However, the Appellant contends that presenting witnesses to assert otherwise

could expose the foreclosure action as illegitimate. The Appellant maintains that the Appellee, a debt collector, lacks the legal standing to pursue foreclosure. Therefore, the Appellant respectfully requests that this Honorable Court grant a dismissal of the case. (See: Appellee's filings on the trial court docket as of 9/29/23 and an amended witness list as of 11/16/23.)

The Appellee also introduced documents claiming to be in possession of the original note. However, according to the Mortgage Audit Report, the mortgage and the note have taken two distinctly different paths: the mortgage was never transferred, and no recorded assignment of mortgage was noted as of 5/10/2024. Documents must be filed and recorded before a proper foreclosure can proceed (**EXHIBIT A - Bloomberg Mortgage Audit Report**, Pages: 2, 17, 34, and 35).

Given the gravity of potential perjury and fraudulent misrepresentation, the Appellant further requests that this Court not only vacate the default and final judgment but also refer the case for criminal investigation. The Court should direct appropriate authorities to investigate whether the Appellee's witnesses knowingly provided false testimony under oath, in violation of Florida Statutes § 837.02(1). If proven, such conduct would constitute a serious breach of the law.

## **2. Securitization and Separation of the Note and Mortgage**

The audit indicates that the mortgage was securitized and the note was separated from the mortgage without any disclosure to the Appellant. According to the principle established in *U.S. Bank Nat'l Ass'n v. Boswell*, 197 So. 3d 1222 (Fla. 4th DCA 2016), the separation of the note and mortgage can render the mortgage unenforceable if the entity attempting to foreclose does not possess both instruments. This issue of separation directly impacts the Appellee's ability to enforce the mortgage and should have been fully examined before the court entered a default judgment.

## **3. Fraudulent Initiation of Foreclosure and Filing of Lis Pendens and Perfection of Lien**

The audit also reveals that the foreclosure action was fraudulently initiated by a debt collector who filed a lis pendens without proper legal standing or ownership of the note. The filing of such a lis pendens, without a valid legal basis, violates Florida law and the principles of equity, potentially causing unjust harm to the property owner. In *Moss v. Moss*, 502 So. 2d 1302, 1304 (Fla. 4th DCA 1987), the court held that the filing of a lis pendens without proper legal foundation constitutes a wrongful act causing irreparable harm. The failure to consider this fraudulent action before entering a default judgment undermines the fairness of the judicial process.

**Improper Lis Pendens:** Filing a lis pendens without proper documentation to support the foreclosure action is improper. The lis pendens serves to notify the public and potential buyers of the pending legal action, and if it is filed without legal standing, it constitutes a fraudulent act.

**Unperfected Lien:** The lien on the property is unperfected if the underlying documents (assignments, transfers, endorsements) are not properly executed and recorded before the foreclosure action is initiated. An unperfected lien cannot be enforced in court.

**Florida Statutes § 701.02:** This statute mandates that all assignments of mortgages must be recorded. A failure to record undermines the foreclosure action, as the Appellee cannot prove rightful holder status.

**Note:**

Even if the debt collector, Appellee, later obtains proper endorsements, transfers, or assignments, those documents are inadmissible and do not cure the original lack of standing. Filing a foreclosure action without legal standing is a serious violation of both Florida law and broader principles of legal procedure. The attempt to retroactively fix this error by obtaining or creating documents after the fact is legally insufficient and constitutes fraud upon the court. This fraudulent conduct warrants dismissal of the foreclosure action and potential sanctions against the debt collector, including a complete bar to re-filing the foreclosure.

#### **4. Incomplete Chain of Title**

The audit report further uncovers an incomplete chain of title, where there is no proper documentation of the legal transfer of the mortgage and note. Florida law mandates that a clear chain of title must be established for any party seeking to enforce a mortgage (see *Johnston v. Hudlett*, 32 So. 3d 700, 703 (Fla. 4th DCA 2010)). In *Johnston*, the court emphasized that a break in the chain of title can invalidate a foreclosure action. In this case, the lack of proper documentation and the broken chain of title should have been decisive factors in preventing the entry of a default judgment and warrant the vacating of such judgment.

#### **6. Equity and Due Process Considerations**

Equity principles demand that courts act to prevent unjust enrichment and ensure that all parties have a fair opportunity to present their case. The denial of the Appellant's motion without consideration of these substantial defenses is inconsistent with the principles of equity, as it deprives the Appellant of the right to a fair hearing. In *Cohen v. Kravit Estate Buyers, Inc.*, 843 So. 2d 989, 991 (Fla. 4th DCA 2003), the court held that due process is violated when a party is denied the opportunity to be heard on critical issues affecting their rights. Furthermore, under Florida Rule of Civil Procedure 1.540(b), the court has the authority to relieve a party from a judgment due to fraud or other misconduct. The findings from the mortgage audit clearly justify such relief, as equity demands that the Appellant be granted a full hearing on the merits of their defenses.

#### **Argument:**

The entry of a default judgment against the Appellant, without adequately considering the circumstances and the valid defenses presented, constitutes a procedural error and a miscarriage of justice. The default judgment was improperly granted and should be vacated to allow for a fair and equitable resolution of the case.

#### **V. Pending Complaints Against the Debt Collector, Appellee: Evidence of Ongoing Unlawful Conduct**

Legal Explanation: In the broader context of the debt collector's actions, it is crucial to present the ongoing administrative complaints filed against them with various regulatory and consumer protection agencies. These complaints further illustrate a pattern of misconduct by the debt collector, Appellee, which is directly relevant to this appeal.

1. Consumer Financial Protection Bureau (CFPB) Complaint (Filed August 13, 2024):

On August 13, 2024, a formal complaint was lodged with the Consumer Financial Protection Bureau (CFPB) against the debt collector, Appellee. This complaint alleges violations of federal consumer protection laws, including unfair and deceptive practices in debt collection. The CFPB is currently investigating these claims, and the outcome of this investigation could significantly impact the debt collector's standing and credibility in this case.

## 2. Florida Attorney General Complaint (Filed July 10, 2024):

A complaint was submitted to the Florida Attorney General's office on July 10, 2024, alleging fraudulent and unethical practices by the debt collector, Appellee, in their handling of mortgage servicing and foreclosure actions. The Attorney General's office is reviewing the complaint, and any findings may further substantiate the argument that the foreclosure action was improperly initiated and pursued.

## 3. Better Business Bureau (BBB) Complaint #ID 21937191 (Filed July 3, 2024):

On July 3, 2024, a complaint was filed with the Better Business Bureau (BBB) concerning the debt collector's, Appellee's, misleading communications and failure to provide proper documentation to support their foreclosure claims. Since the debt collector, Appellee, was acquired by a new company (NEWREZ LLC DBA, SHELLPOINT MORTGAGE SERVICING NMLS #3013), the complaint also addresses the new company's actions, particularly their continued billing for the same disputed mortgage principal. The BBB is currently mediating this complaint, which could lead to a formal review and potential sanctions against both the debt collector, Appellee, and the new company.

### Relevant Law:

Florida's Consumer Collection Practices Act (FCCPA) (Fla. Stat. § 559.55 et seq.): The FCCPA, mirroring the FDCPA, prohibits debt collectors from engaging in abusive, deceptive, and unfair debt collection practices. The continued billing by the new company without proper legal standing could violate these statutes, especially if they failed to record the proper assignment or transfer of the mortgage and note.

Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692 et seq.): The FDCPA prohibits debt collectors from using any false, deceptive, or misleading representations or means in connection with the collection of any debt. The new company's actions could be seen as an attempt to collect a debt without proper legal authority, in violation of federal law.

Florida Contract Law (Fla. Stat. § 673.3011): Under Florida contract law, to enforce a debt such as a promissory note or mortgage, a party must be the "person entitled to enforce" the instrument, meaning they must prove proper transfer or assignment of the debt. Failure to do so while continuing to demand payment can breach the contract and violate the debtor's rights.

Legal Relevance to the Appeal: These pending complaints highlight the debt collector's, Appellee's, and the new company's pattern of improper and potentially illegal behavior. They provide independent and ongoing assessments of the debt collector's, Appellee's, conduct by authoritative bodies. The appellate

court should consider these complaints, as they reflect not only on the debt collector's, Appellee's, credibility but also on the legality of their actions in this specific case.

The fact that the new company is sending bills for the same principal amount at issue in the disputed foreclosure, without demonstrating proper legal standing through recorded transfers or assignments, underscores the ongoing and potentially unlawful nature of the foreclosure proceedings. The pending status of these complaints suggests that the debt collector's, Appellee's, actions, as well as those of the new company, are under scrutiny, which could influence the court's determination of whether the foreclosure process in this case was conducted lawfully.

This foreclosure is tainted by the debt collector's, Appellee's, broader pattern of misconduct and should be vacated or reversed. The new company's actions further compound the issues, raising serious concerns about the legitimacy of the foreclosure and ongoing billing practices.

## **VI. Conclusion**

This appeal challenges the final judgment of foreclosure, which is tainted by fundamental flaws including multiple instances of fraud, misrepresentation, lack of standing, violations of due process, and procedural errors, resulting in an unjust default judgment. The Appellant, Isabel Howard, as the Beneficial and Equitable Title Holder for ISABEL HOWARD, seeks to reverse the trial court's orders that have collectively led to an inequitable outcome.

## **VII. Relief**

Specifically, the Appellant seeks relief from the following orders:

- 1. Order Denying Appellant's Motion to Vacate Default and Final Judgment** – This order denied the Appellant's request to rectify the default and final judgment based on compelling evidence of error and fraud.
- 2. Orders for Default and Final Judgment of Foreclosure** – These orders were issued without proper consideration of the Appellant's defenses and counterclaims, based on flawed proceedings and unsupported claims.
- 3. Order Denying Appellant's Amended Answer and Counterclaim** – This order improperly denied the Appellant's right to present a substantive defense and counterclaim, which are essential to contesting the foreclosure action.
- 4. Order Granting Appellee's Motion to Reschedule Foreclosure Sale and Prohibiting Clerk of Court from Canceling Foreclosure Sale Without Written Court Order** – This order unjustly allowed the appellee to reschedule the foreclosure sale and restricted the Clerk of Court from taking necessary actions to halt an improperly conducted sale. the order restricting the Appellant's ability to file for bankruptcy without a court order violates federal law, as bankruptcy is a federally protected right under **Article I, Section 8, Clause 4 of the U.S. Constitution.**

The Appellant requests that this Honorable Court reverse the trial court's judgment and remand the case with instructions to grant summary judgment in favor of the Appellant, or in the alternative, to conduct further proceedings consistent with the findings of this Court. The Appellant seeks an opportunity to present their evidence and defenses fully, ensuring that proceedings align with principles of fairness and due process, particularly given the clear evidence of fraud, lack of standing, and due process violations.

#### **Other Relief**

**1-Dismiss Lis Pendens:** The Appellant seeks for the lis pendens to be dismissed if it was improperly filed.

**2- Equitable Considerations:** The appellant has consistently sought to defend against the foreclosure on substantive grounds. Equity demands that the court grant relief from the procedural defaults to ensure that the case is decided on its merits rather than on procedural technicalities.

**3- Issue a Preliminary Injunction:** Order a preliminary injunction preventing the appellee from proceeding with any foreclosure sale, eviction, or enforcement of the foreclosure judgment during the pendency of this appeal.

**4- Stay the Enforcement of the Foreclosure Judgment:** Stay the enforcement of the foreclosure judgment, including the filing of any writ of possession or other actions by the appellee to take control of the subject property, until the resolution of this appeal.

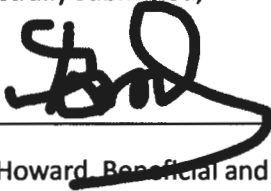
**5- Enjoin the Appellee from Further Actions:** Enjoin the appellee from taking any further actions to enforce the foreclosure, including but not limited to recording any deeds, pursuing eviction, or transferring the property, pending the outcome of this appeal.

#### **VIII. EXHIBITS**

- **EXHIBIT A** – Third Party - Bloomberg Mortgage Audit Report -Mortgage Audits Online
- **EXHIBIT B** – AFFIDAVITS of Experts from the Mortgage Audit Report- Mortgage Audits Online
- **EXHIBIT C** - Email Thread from Judge Marina Garcia-Wood's Assistant, Melinda Fleming, and the Appellee, Demonstrating the Blocking and Denial of the Appellant's Ability to Present Evidence and Witnesses.
- **EXHIBIT D** - Affidavit of Truth outlining all violations committed by the Appellee under 15 U.S. Code, Subchapter V – Debt Collection Practices, and 12 CFR-1026.13(d)1.
- **EXHIBIT E** – 2<sup>nd</sup> Affidavit and validation of debt request
- **EXHIBIT F** – 2<sup>ND</sup> Request to Validate the alleged debt
- **EXHIBIT G** – (9/3/2022) Appellant's complaint with the Consumer Financial Protection Bureau (CFPB) to obtain a response and validation of debt from the Appellee
- **EXHIBIT H** – (11/8/2022) Appellant's Conditional Acceptance to the Appellee, accepting their offer only if the Appellee produced factual evidence proving their legal standing to pursue a foreclosure and collect the alleged debt.
- **EXHIBIT I** – Appellant's filing with UCC-1 financial statement claiming a security interest, asserting that she is the real party in interest and the Beneficial and Equitable Title Holder for ISABEL HOWARD E&T.
- **EXHIBIT J** – (2/28/2023) Appellant's Notice to Cease and Desist to the Appellee requesting to stop any further communication and collection.

- **EXHIBIT K – (8/13/2024)** Appellant’s complaint with the Consumer Financial Protection Bureau (CFPB) Complaint in pending status #ID 240813-15593564
- **EXHIBIT L – (7/10/2024)** Appellant’s complaint with the Florida Attorney General Complaint in pending status.
- **EXHIBIT M – (7/3/2024)** Appellant’s complaint with the Better Business Bureau (BBB) Complaint in pending status #ID 21937191

Respectfully submitted,



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

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email: [isarova@live.com](mailto:isarova@live.com)

***Appellant***

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on .....September 2nd 2024....., a true and correct copy of the foregoing was furnished via email to:

Ivy J Taub

E-mail : [itaub@raslg.com](mailto:itaub@raslg.com)