No. _____

In The
Supreme Court Of The United States

SHERI DANIEL,
Petitioner,

v.

BANK OF AMERICA NATIONAL ASSOCIATION,
Respondent.

On Petition for Writ of Certiorari to the The Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

SHERI DANIEL, Pro Se
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QUESTION PRESENTED

Whether Virginia violates the Due Process Clause of the Fourteenth Amendment by denying the right to a substantive hearing before allowing and assisting the banks to use fraudulent documents to take real property.

PARTIES TO THE PROCEEDING

PETITIONER, SHERI DANIEL, an individual natural person, citizen of the United States and the Commonwealth of Virginia, is acting pro se, is not an attorney and has had very minimal contact with the legal system prior to this action. Ms. Daniel was a defendant in the Fairfax County General District Court, appellant/defendant in the Fairfax County Circuit Court and Appellant in the Supreme Court of Virginia.

RESPONDENT, BANK OF AMERICA, NATIONAL ASSOCIATION, was the plaintiff in the Fairfax County General District Court, appellee/plaintiff in the Fairfax County Circuit Court and Appellee in the Supreme Court of Virginia.

CORPORATE DISCLOSURE STATEMENT

Pursuant to U.S. Supreme Court Rule 29.6, Petitioner Sheri Daniel is an individual with no corporate affiliation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Sheri Daniel respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Virginia.

PLEASE NOTE:

This Petition is filed concurrently with a petition for:

Sheri Daniel v. Wells Fargo Bank, N.A. et al.

The two petitions are ONE case. The attorneys for the banks left the *Unlawful Detainer* in the State Court and removed Ms. Daniel's defense/complaint to the Federal Court.

The result is the *Unlawful Detainer* case went forward in the State Courts and Ms. Daniel's defense went forward in the Federal Courts. Therefore, two Petitions for Writ of Certiorari are required and are submitted concurrently.

OPINIONS BELOW

The Supreme Court of Virginia did not enter an *Opinion*.

The Fairfax County Circuit Court entered an *Opinion Letter* which is unpublished (App. 8).

STATEMENT OF JURISDICTION

The judgment of The Supreme Court of Virginia on the Petition for Rehearing was entered on June 13, 2014. (App. 12)

The judgment of The Supreme Court of Virginia on the Petition for Appeal was entered on March 21, 2014. (App. 1)

This Court's jurisdiction is invoked under 28 U.S.C. §§1257(a) and 2101(c). This petition was timely filed within ninety days after the judgment on the Petition for Rehearing.

Pursuant to U.S. Supreme Court Rules 14.1(e)(v) and 29.4(c), this petition draws into question the constitutionality of the process not the constitutionality of a state statute unless the statutes define the process. Rule 29.4(c) does not appear to apply. However, as 28 U.S.C. § 2403(b) may apply and a copy of the petition has been served on the State Attorney General.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are set forth in the Appendix to this petition (App. 13).

STATEMENT OF THE CASE

FACTUAL BACKGROUND

This case began as an *Unlawful Detainer* action that is based on an invalid foreclosure sale. It is one massive fraud of an on-going nature, originated by Wells Fargo Bank, N.A., as servicer, and Bank of America, N.A. and U.S. Bank, N.A., Trustee as lender/noteholders and perpetuated by the attorneys at BWW Law Group, LLC and Equity Trustees, LLC. There are two "Properties": the "Primary Residence" and the "Rental Property".

The foreclosure sale on the "Rental Property" occurred on April 26, 2012. At that time, the payments on the "Primary Residence" were current and had been current. The payments for the "Primary Residence" fell behind as a direct result of the fraud and abusive actions by Wells Fargo Bank, N.A., servicer, acting on behalf of Bank of America, N.A. and U.S. Bank, N.A., Trustee (For details, see the Petition for the Federal case, *Sheri Daniel v. Wells Fargo Bank, N.A. et al*.) The foreclosure sale on the "Primary Residence" occurred on November 1, 2012.

In 2009, Sheri Daniel executed two *Loan Modifications*, one for each property. The documents were prepared by Wells Fargo Bank, N.A., the servicer for each Property. They are *new* contracts to modify the original Deed of Trust and Note.

Ms. Daniel later learned the *Loan Modification* documents for each property falsely identified Wells Fargo Bank, N.A. as the "Lender" without identifying the true "Secured Parties" (Va. Code §55-48). Therefore, the *Loan Modifications* are *ab initio* invalid contracts.

The numbers used to execute the foreclosure sales are from these false *Loan Modification* documents, rendering the foreclosure sales void and this unlawful detainer action void.

The false *Loan Modification* document for the "Primary Residence" was recorded in 2010 in the Land Records of the Fairfax County Circuit Court constituting a felony (Va. Code 18.2-168) and fraud upon the court. (Va. Code § 8.01-428 (A) and (D)) and (*Motion to Vacate, App. 27).*

In addition, the false *Final Foreclosure Accountings*, one for each property, based upon the false *Loan Modifications*, were submitted to the Fairfax County Circuit Court by Equity Trustees, LLC and recorded in 2013 in the Fairfax County Circuit Court Land Records (Va. Code 18.2-168).

In spite of all of her efforts to get a hearing on the substance of the case, by order of the Virginia courts, on February 18, 2014, Ms. Daniel was evicted from her home by the Fairfax County Sheriff's Office violating her 14th Amendment right to Due Process.

PROCEDURAL BACKGROUD

The Summons for Unlawful Detainer of the "Primary Residence" was filed by Bank of America, N.A. in January 2013, in the General District Court of Fairfax County, Virginia. Ms. Daniel filed a *Grounds for Defense* and a *Defendant's Response to Plaintiff's Pretrial Motion for Summary Judgment or Motion in Limine* (App. 23). Repeatedly, for each hearing in 2013, opposing counsel filed motions to exclude any evidence about the validity of the foreclosure sale and to increase the appeal bond. Since the General District Court cannot hear issues of title, Ms. Daniel was advised to appeal to the Circuit Court. The appeal bond was set at $0 and the appeal was perfected.

On April 19, 2013, in the Circuit Court, Bank of America, N.A. by counsel asked the court to 1) exclude any evidence questioning the validity of the foreclosure sale and 2) to increase the Appeal Bond. The Circuit Court remanded the case back to the General District Court to set an appeal bond. (App. 2).

The Circuit Court also ordered Bank of America, N.A. to work with Ms. Daniel to keep her in her home. On April 23, 2013 Ms. Daniel received an email from the attorneys stating the she would have to re-purchase her home (where she had lived for 20 years) and re-qualify (as though she had never lived there). Without rescinding the foreclosure sales, Ms. Daniel recognized it was a "set up to fail" and that even with a court order, Bank of America, N.A. was not going to work with her.

The next day, on April 24, 2013 Ms. Daniel filed a complaint/defense (Case No. CL-2013-07554) in the Fairfax County Circuit Court along with Lis Pendens for each property. The caption identified the sole Defendant as Wells Fargo Bank, N.A., acting as servicer. Bank of America, N.A. and U.S. Bank, N.A., Trustee were identified as the lenders but not included in the caption. Pursuant to Virginia Code 8.02-281, the complaint "arising out of the same transaction or occurrence" was filed with the intent to consolidate it with the second appeal from the General District Court.

On April 26, 2013 one of the properties at issue was re-sold in spite of the Lis Pendens recorded in the Land Records of Fairfax County Circuit Court.

The re-sale of the "Rental Property", prompted the need to join additional Defendants. On May 15, 2013 Ms. Daniel sent notices to the new Defendants.

Ms. Daniel now understands (but did not know at the time) the joinder of the additional Defendants meant the Defendants would no longer be completely diverse and therefore the case would not meet the requirements for removal to Federal Court under 28 U.S.C. § 1332(a).

Immediately upon receipt of the notice, on May 17, 2013, counsel for Wells Fargo Bank, N.A., removed the case to Federal Court on the grounds of "complete Diversity of citizenship between Plaintiff and Wells Fargo" before the additional Defendants could be joined.

The *Unlawful Detainer*, still en route back to the General District Court to set an appeal bond, was left in the State court.

On June 12, 2013, at the hearing in the General District Court the appeal bond was set at $1. Again Ms. Daniel perfected the appeal to the Circuit Court.

Wells Fargo's removal of Ms. Daniel's Complaint to Federal Court while leaving the *Unlawful Detainer* in the Circuit Court split the case into piecemeal litigation and deprived Ms. Daniel of the right to a defense in the *Unlawful Detainer* action in the Circuit Court. (Case No. CL-2013-0010303).

See simultaneous Petition, *Sheri Daniel v. Wells Fargo Bank, N.A. et al.,* for details of Federal Court proceedings.

The trial on the *Unlawful Detainer* appeal was scheduled for August 29, 2013. For judicial efficiency, Defendant Sheri Daniel, asked Bank of America, N.A., to agree to stay the trial in Circuit Court until the matter was heard and resolved in the Federal Court. Bank of America, N.A. by counsel *refused* to agree.

Therefore Ms. Daniel, in an effort to have some defense prior to a judgment in the *Unlawful Detainer* proceeding, filed a complaint (Case No. CL-2013-13404 amended and expanded from the Original Complaint) with the Circuit Court and made two efforts to have the cases consolidated.

The first was denied by the judge in Calendar Control. In response to the second effort in October 2013, Ms. Daniel was sent a postcard informing her that a separate hearing had to be set for a Motions Friday. The first available date would be *after* the *Writ for Possession* had been issued.

On August 29, 2013, the "trial" was scheduled for an overcrowded courtroom where the judge was disposing of cases as quickly as possible. Ms. Daniel was given maybe 2 minutes to explain that her defense had been removed to Federal Court. Even though the Circuit Court is a court of record, there was no court reporter, therefore there is no record and no transcript. The Trial Court judge entered the *Judgment for Possession*, withholding the *Writ for Possession* and retaining jurisdiction to reconsider pending the outcome in Federal Court. (App. 3)

On October 29, 2013, the Trial Court judge entered the *Order* for the *Writ for Possession*. (App. 5) and Ms. Daniel understood this to be the *Final Order* for purposes of appeal.

On November 5, 2013, Ms. Daniel timely filed *Notice of Appeal* to the Supreme Court of Virginia.

On November 14, 2013, Ms. Daniel filed *Motion to Vacate on Grounds of Fraud Upon the Court*. (App. 31)

On November 18, the Trial Court judge entered the *Order* (App. 7) and *Opinion Letter* (App. 8) stating he could not hear the *Motion to Vacate* because the Virginia Supreme Court now had

jurisdiction and citing *Ghameshlouy v. Commonwealth of VA., 279 Va. 379,390-91 (2010)* ("[A]n appellate court will acquire jurisdiction [from a circuit court] over the case if a party aggrieved of the judgment, who was properly before the circuit court, **notes an appeal of the judgment in accord with the rules"**). (Emphasis added) This ruling affirms the validity and timeliness of the appeal and must have relied upon October 29, 2013 as the date of *Final Order* for purposes of appeal.

On December 26, 2013, Ms. Daniel timely filed a *Statement of Facts* in the Fairfax County Circuit Court. The Trial Court judge refused to sign it.

On January 13, 2014, the Trial Court judge by entering an *Order*, stating Ms. Daniel's *Statement of Facts* was not timely filed, apparently now relied on August 29, 2013 as the date of *Final Order*. (App. 10)

By flip flopping on which is the date of *Final Order*, the Trial Court judge denied Ms. Daniel a hearing on the *Motion to Vacate on the Grounds of Fraud upon the Court*. (See *Petition for Rehearing*, App. 37)

On January 27, 2014, Ms. Daniel timely filed a *Petition for Appeal* in the Supreme Court of Virginia.

On March 7, 2014, the Supreme Court of Virginia noticed an oral Writ Hearing scheduled for 1 p.m. on April 1, 2014.

On March 21, 2104, before the hearing, the Supreme Court of Virginia, dismissed the appeal "Finding that...the appellant failed to timely file the notice of appeal..." (App.1)

On April 2, 2014, Ms. Daniel timely filed a *Petition for Rehearing*. (App. 33)

On June 13, 2014, the Supreme Court of Virginia denied the *Petition for Rehearing*. (App. 12)

From the beginning, it was Ms. Daniel's intent to have one case in one court. It is Wells Fargo Bank, N.A. and Bank of America, N.A., by counsel, that have split the case into piecemeal litigation. In doing so, they sought and succeeded, with the assistance of the Virginia courts, to use false documents to evict Ms. Daniel from her home violating her 14th Amendment right to Due Process.

WHEN DUE PROCESS ISSUE WAS RAISED

Pursuant to U.S. Supreme Court Rule 14(1)(g)(i)[1] :

In the lower courts, the issue of Due Process was first raised by Ms. Daniel in her *first* reply brief submitted on February 6, 2013. The "*Defendant's Response to Plaintiff's Pretrial Motion for Summary Judgment or Motion in Limine*" is presented herein. (App. 23)

The issue of Due Process was raised again by Ms. Daniel in the "*Defendant's Response to Plaintiff's Motion for Writ of Possession*" which was submitted on June 3, 2013 and included herein. (App. 25)

In the appellate court, the issue of Due Process is raised in the *Petition for Appeal* submitted to the Supreme Court of Virginia in Assignment of Error IV and ¶ 21, ¶ 24, and ¶ 25.

The Virginia Courts passed on the issue by blatantly denying the right to a hearing, thereby violating Ms. Daniel's right to Due Process under the 14th Amendment.

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[1] If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; ... so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari

REASONS FOR GRANTING RELIEF

I. Though Virginia violates the Due Process Clause of the 14th Amendment and refuses to hear this fraud case, the same fraud "Fraud Upon the Court" has, likely, also occurred in the Land Records in the other forty nine states.

This case is of exceptional importance and presents a substantial question that has significant precedential value that is affecting the Land Records and the lives of many Americans across the country.

According to the Wells Fargo 2009 Annual Report, (2009 is the year Wells Fargo Bank, N.A. executed two, proprietary, non-HAMP, *Loan Modifications* for Ms. Daniel), Wells Fargo Bank, N.A. executed 620,000 Loan Modifications. It is plausible that Wells Fargo Bank, N.A. may have also executed the same type of fraudulent Loan Modifications in other years.

Two *different divisions* of Wells Fargo Bank, N.A. executed two similarly fraudulent loan modifications for Ms. Daniel, one on the "Primary Residence" and one on the "Rental Property". It appears this is how Wells Fargo, acting as servicer not lender, created en mass, fraudulent loan modification documents. Therefore, it is likely there are many more similar *ab initio* invalid loan modification documents recorded in Land Records across the country and used to execute foreclosures.

The deceit is particularly egregious because the loan modification document, standing alone, appears to be *prima facie* valid. It is only when compared with the actual "Secured Party" and determining that the identity of the lender was misrepresented does the fraud become apparent.

With the recent increase in mortgage loans being sold repeatedly on the secondary market, without recordation or notice to homeowners, the task of identifying which documents are fraudulent is substantially complicated and provides a ripe opportunity for the banks to conceal fraud.

Furthermore, if the property is subjected to a foreclosure, comparing the final foreclosure accounting with the loan modification document is one way to determine if fraudulent documents were used to execute the foreclosure. But such a comparison can only be completed months after the harm is done.

It's a revelation of mind boggling magnitude.

However, if this Court remains silent, officials responsible for the Land Records across the country and the affected homeowners have no avenue to pursue justice**.**

II. A review of many recent foreclosure cases in U.S. District Courts, has *not* found another foreclosure case which 1) describes this type of fraud and 2) where the evidence of fraud is as straightforward and direct as in this case.

In this case, the Loan Modification documents are ab initio invalid because they are executed in the name of the WRONG BANK. The documents are in writing, clearly *ab initio* invalid contracts and feloniously recorded in the Fairfax County Circuit Court's Land Records.

To determine which document was used to execute the foreclosure sale, a simple comparison of 1) the *Original Deed of Trust*, 2) the false *Loan Modification* document and 3) the *Final Foreclosure Accounting* (as recorded in the Fairfax County Land Records) should suffice. By comparing the interest rates shown on the documents, the false *Loan Modification* document matches the *Final Foreclosure Accounting*. It was the false *Loan Modification* that was used to execute the foreclosure sale, not the *Original Deed of Trust* as asserted by counsel for Bank of America, N.A.

The numbers don't lie. On the "Primary Residence", the interest rate on the *Final Foreclosure Accounting* is 4.55%. The interest rate on the *ab initio* invalid *Loan Modification* is 4.55% and the interest rate on the *Original Deed of Trust* is 6.375%. It was the *ab initio* invalid *Loan Modification* document that was used to execute the foreclosure sale on the "Primary Residence" and subsequently evict Ms. Daniel from her home.[2]

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[2] Note: The interest rate is used here only as a simple way to compare the documents and to determine which was used for the *Final Foreclosure Accounting* and the foreclosure sale. For the loan modification, the banks required the type of loan to change from an interest-only to an amortizing loan. With the change in type of loan, the interest rate must be reduced by

III. As a result of the fraudulent and felonious actions by the banks, Ms. Daniel has been deprived of her real property and suffered great harm. Isn't Ms. Daniel, as every citizen affected by this fraud, entitled to Due Process under the law?

From an extensive review of foreclosure cases in U.S. District Courts, it is clear, as Ms. Daniel was forewarned by several attorneys, that foreclosure cases are "not favored" by the Courts, are summarily disposed of in the State Courts and rarely survive Rule 12(b)(6) motions to dismiss for failure to state a claim in the Federal Court.

In *Mathews v. Eldridge*, 424 U.S. 319 (1976). "Parties whose rights are to be affected are entitled to be heard" and "This court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest." *Mathews* further identifies factors considered.

> "Identification of specific dictates of due process generally requires consideration of three distinct factors: private interest that will be affected by official action; risk of erroneous deprivation of such interest through procedures used, and probable value, if any, of additional or substitute procedural safeguards; and government's interest, including function involved and fiscal and administrative burdens that additional or

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approx. 2% to produce the same monthly payment. However, a detailed discussion of loan programs is not pertinent here.

substitute procedural requirement would entail.

In this case, the property is real property and as such is consistent with traditional definitions of property, and therefore, does not require further scrutiny. The property was the Petitioner's primary residence, and the deprivation (eviction) has left her homeless so the consequences are severe. The risk of erroneous deprivation is high when the Petitioner is documenting, with particularity, fraud. The government's interest is great since the fraud has been shown to extend to the Land Records of government entities.

Furthermore, one attorney also warned the Petitioner that this fraud issue is so big the lower courts will not touch it. The U.S. Supreme Court with its broad perspective is the proper venue for this case to be heard.

The certiorari should be granted because the lower courts look to this court for direction and precedent.

IV. This Court's silence on the question presented emboldens the banks to continue to defraud American homeowners and commit felonies against the Land Records across the country.

This month, August 2014 the U.S. Justice Department reached a record breaking 17+ billion dollar settlement with Bank of America, N.A. and though a large number, for the banks, it is simply a

cost of doing business. But the individual homeowner has been left with little recourse and virtually no relief in bringing action against the banks.

Does signing a Deed of Trust relinquish one's 14th Amendment right to Due Process under the law? Such a conclusion would surely change the landscape of home ownership in America.

CONCLUSION

Certiorari should be granted for this Petition, so the Court can restore homeowners' constitutional rights and the Land Records across the country can be corrected.

The petition for certiorari should be granted

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Respectfully submitted,

Sheri Daniel, *Pro se*
P.O. Box 240
McLean, VA 22101
(703) 489-2656
Sheri.great.falls@gmail.com

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 21st day of March, 2014.

Sheri Daniel, Appellant

Against Record No. 140205
Circuit Court No. CL-2013-0010303

Bank of America, National Association, Appellee.

From the Circuit Court of Fairfax County

Finding that the appeal was not perfected in the manner provided by law because the appellant failed to timely file the notice of appeal, the court dismisses the petition filed in the above-styled case. Rule 5:9(a).

A copy,
Teste:

Patricia L. Harrington, Clerk

By: _____/s/_____
Deputy Clerk

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BANK OF AMERICA, N.A.	**)**	
Plaintiff,	**)**	
v.	**)**	**CL 2013-5051**
SHERI DANIEL	**)**	
Defendant.	**)**	

ORDER

THIS MATTER came before the Court on the 19th day of April, 2013, on the Plaintiff's Motion to Dismiss the Appeal, or alternatively, to Amend the Summons and Increase the Appeal Bond.

Upon the matters presented to the Court at the hearing, it is hereby

ADJUDGED, ORDERED, AND DECREED that this appeal is remanded to the General District Court pursuant to Virginia Code § 16.1-109(B), and that the General District Court will proceed pursuant to that code section.

Entered on this 24th day of April, 2013.

_____/s/_____
Judge David S. Schell

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BANK OF AMERICA, N.A.	)	
Plaintiffs,	)	
	)	**Case No.:**
v.	)	**CL2013-0010303**
	)	
SHERI DANIEL, et al,	)	
Defendants.	)	

ORDER

This matter came before to be heard on the 29th day of August, 2013 on the trial of unlawful detainer appeal.

Upon the matters presented to the Court at the hearing, it is hereby

ADJUDGED, ORDERED, AND DECREED as follows:

1) Plaintiff Bank of America, N.A. is awarded possession of the subject property 6935 Pinecrest Ave., McLean, Virginia;
2) No writ of possession may issue without an order permitting same from Judge Robert Smith; and
3) To seek a writ of possession plaintiff may place this matter on Judge Smith's one-week motions docket for consideration.

Entered this 29 day of August, 2013.

_____/s/_____
[Robert J. Smith]
Circuit Court Judge

SEEN AND OBJECTED TO	SEEN AND AGREED AS to award of possession but objected to as to items no. 2 and 3 in order.
_____/s/_____	_ _____/s/_____
[Sheri Daniel]	[Allison Melton]
Counsel for Plaintiff/ Complainant [sic]	Counsel for Defendant [sic]

VIRGINIA:
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

BANK OF AMERICA, NATIONAL ASSOCIATION, Plaintiff/Appellee,	)	
v.	)	Case No. CL-2013-0010303
SHERI DANIEL, *et al,* Defendants/Appellants.	)	

ORDER

THIS CAUSE came to be heard on Plaintiff's Motion for Writ of Possession. It is hereby ORDERED that:

(1) Plaintiff's Motion for Writ of Possession is GRANTED;

(2) Plaintiff is permitted to file a writ of possession based on its August 29, 2013 Judgment;

(3) Clerk shall issue said writ once received.

Entered this 29th day of October, 2013.

_____/s/_____
[Robert J. Smith]
Circuit Court Judge

WE ASK FOR THIS:

_____/s/_____
Allison Melton,
VSB 75192
BWW Law Group, LLC
2101 Wilson Blvd., Suite 402
Arlington, VA 22201
Tel. (301) 961-6555 x 4041
Fax (703) 483-4025
Counsel for Plaintiff

SEEN AND _____.

Endorsement Waived
Per Rule 1:13_____
Sheri Daniel

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BANK OF AMERICA, N.A.	)	
Plaintiff,	)	
	)	**CL-2013-10303**
v.	)	
	)	
SHERI DANIEL, et al.,	)	
Defendant.	)	

ORDER

WHEREAS Defendant has filed a Motion to Vacate Judgment; and,

WHEREAS Defendant has appealed to the Supreme Court of Virginia prior to the filing of the Motion to Vacate Judgment; it is therefore,

ORDERED that this court lacks jurisdiction to hear the Motion to Vacate Judgment.

Entered this 18th day of November 2013.

_____/s/_____
Judge Robert J. Smith

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT, PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA.

_____

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA
Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009
703-246-2221 Fax 703-246-5496 TDD 703-352-4139

COUNTY OF FAIRFAX CITY OF FAIRFAX

November 18, 2013

Sheri Daniel
6935 Pinecrest Ave.
McLean, VA 22101
Defendant

Benjamin Rosen
Allison Melton
BWW Law Group, LLC
2020 N. 14th Street, Ste. 250
Arlington, Virginia 22201
Counsel for Plaintiff

Re: Daniel v. Bank of America N.A.
Case No CL-2013-10303

Dear Ms. Daniel, Mr. Rosen, and Ms. Melton,

I have received your motion to Vacate Judgment and to Vacate the Order to Issue Writ and to Rescind the Foreclosure Sale. This Court cannot hear this motion at this time because the matter is on appeal to the Supreme Court of Virginia. Your appeal divested the Fairfax County Circuit Court of jurisdiction. *See Ghameshlouy v. Commonwealth of Va.*, 279 Va. 379, 390-91 (2010)("[A]n appellate court

will acquire jurisdiction [from a circuit court] over the case if a party aggrieved of the judgment, who was properly before the circuit court, notes an appeal of the judgment in accord with the rules").

Sincerely,

_____ /s/_____

Robert J. Smith
Fairfax County Circuit Court

VIRGINIA:
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

BANK OF AMERICA, N.A.	)	
Plaintiff,	)	
	)	**CL-2013-10303**
v.	)	
	)	
SHERI DANIEL, et al.,	)	
Defendant.	)	

ORDER

WHEREAS Defendant's Statement of Facts was filed more than 55 days after the final judgment of this Court was rendered; and,

WHEREAS this Court has complied with Va. Sup. Ct. Rule 5:11(e)(1), which requires that the Court not be presented with the Statement of Facts prior to 15 days after the filing of said Statement of Facts; it is therefore,

ORDERED that, pursuant to Sup. Ct. Rule 5:11(g)(2), the Court finds that no corrections are necessary to the Plaintiff's Statement of Facts, that the Court has signed the Plaintiff's proposed Statement of Facts, and that the Court sustains the Plaintiff's objections to the Defendant's proposed Statement of Facts.

Entered this 13th day of January, 2014.

_____/s/_____

Judge Robert J. Smith

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT, PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA.

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 13th day of June, 2014.

Sheri Daniel, Appellant,

against Record No. 140205
Circuit Court No. CL-2013-0010303

Bank of America, National Association, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 21st day of March, 2014 and grant a rehearing thereof, the prayer of the said petition is denied.

A copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/

Deputy Clerk

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1.) U.S. Constitution, article XIV, § 1 provides in pertinent part:

No State shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2.) The Constitution of Virginia (1971) provides in pertinent part:

ARTICLE I
Bill of Rights

A DECLARATION OF RIGHTS made by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

Section 1. Equality and rights of men.
That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety. ...
Section 11. Due process of law; obligation of contracts; taking or damaging of private

property; prohibited discrimination; jury trial in civil cases.
That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts; ...
That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

3.) **The U.S. Code provides in pertinent part**:

28 U.S.C. § 1332 Diversity Of Citizenship; Amount In Controversy; Costs
(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
(1) citizens of different States;

28 U.S.C. § 1441 Removal Of Civil Actions
(a) Generally, Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.
(b) Removal Based on Diversity of Citizenship. ...
(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332 (a) of this

title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

28 U.S.C. § 1446 Procedure For Removal Of Civil Actions

(a) Generally. A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; Generally.

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)

(A) When a civil action is removed solely under section 1441 (a), all defendants who have been properly joined and served must join in or consent to the removal of the action. ...

4.) The Code of Virginia provides in pertinent part:

§ 8.01-128. Verdict and judgment; damages

B. ...Nothing in this section shall preclude a defendant who appears in court at the initial court date from contesting an unlawful detainer action as otherwise provided by law.

§8.01-281 Pleading in alternative; separate trial on motion of party.

A. A party asserting a claim, counterclaim, cross-claim, or third-party claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence.

§ 8.01-428(A) and (D) Setting aside default judgments; clerical mistakes; independent actions to relieve party from judgment or proceedings; grounds and time limitations.

A. ... Upon motion of the plaintiff or judgment debtor and after reasonable notice to the opposite party, his attorney of record or other agent, the court may set aside a judgment ... upon the following grounds: (i) fraud on the court, ... Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree. ...

D. Other judgments or proceedings. - This section does not limit the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceeding ... or to set aside a judgment or decree for fraud upon the court.

§ 8.01-670. In what cases awarded.

A. ... any person may present a petition for an appeal to the Supreme Court if he believes himself aggrieved:

1. By any judgment in a controversy concerning:

a. The title to or boundaries of land, ...

§ 8.01-671. Time within which petition must be presented

A. In cases where an appeal is permitted from the trial court to the Supreme Court, no petition shall be presented for an appeal to the Supreme Court from any final judgment whether the Commonwealth be a party or not, (i) which shall have been rendered more than three months before the petition is presented,...

§ 8.01-681. Decision of appellate court.

The appellate court shall affirm the judgment if there is no error therein, and reverse the same, in whole or in part, if erroneous, and enter such judgment as to the court shall seem right and proper and shall render final judgment upon the merits whenever, in the opinion of the court, the facts before it are such as to enable the court to attain the ends of justice. A civil case shall not be remanded for a trial de novo except when the ends of justice require it, but the appellate court shall, in the order remanding the case, if it be remanded, designate upon what questions or points a new trial is to be had.

§ 16.1-109. Appellate court may require new or additional security.

A. The court to which the appeal is taken may on motion for good cause shown, after reasonable notice

to the appellant, require the appellant to give new or additional security, ...

B. When a bond or other security is required by law to be posted or given in connection with an appeal or removal from a district court, and there is either (i) a defect in such bond or other security as a result of an error of the district court, or (ii) the district court erroneously failed to require the bond or other security, ... If the error or failure is discovered after the case has been sent to the circuit court, the circuit court shall return the case to the district court for the district court to order the appellant or applicant for removal to cure the defect or post the required bond or give the required security within a period of time not longer than the initial period of time for posting the bond or giving the security for removal. Failure to comply with such order shall result in the disallowance of the appeal or denial of the application for removal.

17.1-249. General indexes for clerks' offices; daily index.

A. There shall be kept in every clerk's office modern, family name or ledgerized alphabetical key-table general indexes to all deed books, miscellaneous liens, will books, judgment dockets and court order books. The clerk shall enter daily either in such general indexes or in the daily index to instruments admitted to record every deed, corrected or amended deed, deed of release, deed of trust, contract of sale, or any addendum or memorandum relating to any of these instruments, indexing each instrument in the names of all parties listed in the first clause of each instrument as required by 55-48 and 55-58. Any clerk, deputy clerk, or employee of any clerk who so

indexes any such instrument shall index any name appearing in the first clause of the original instrument, unless the instrument is submitted for recordation with a cover sheet pursuant to 17.1-227.1, in which case, the instrument may be indexed by the information contained in the cover sheet. The clerk shall comply with the provisions of 17.1-223.

B. A deed made to one or more trustees to secure the payment of an indebtedness, and any certificate of satisfaction or certificate of partial satisfaction, assignment, loan modification agreement, substitution of trustees or similar instrument subsequently recorded with respect to such deed, shall be sufficiently indexed if the clerk enters in the appropriate places in the general index to deeds provided for in subsection A the names of the grantor and the name of the beneficiary or, in lieu of the name of the beneficiary, the first listed trustee as grantee. The beneficiary need not be named in the first clause of the deed as a condition of recordation.

C. A deed made by a person in a representative capacity, or by devisees or coparceners, shall be indexed in the names of the grantors and grantees and the name of the former record title owner listed in the first clause of the instrument. ...

E. Every deed of conveyance of real estate in which a vendor's lien is reserved shall be double indexed so as to show not only the conveyance from the grantor to the grantee in the instrument, but also the reservation of the lien as if it were a grant of the same from the grantee to the grantor by a separate instrument and the fact of the lien shall be noted in the index. ...

§ 18.2-168. Forging public records, etc.

If any person forge a public record, or certificate, return, or attestation, of any public officer or public employee, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof, or utter, or attempt to employ as true, such forged record, certificate, return, or attestation, knowing the same to be forged, he shall be guilty of a Class 4 felony.

§ 55-48. Form of deed of trust to secure debts, etc.

A deed of trust to secure debts or indemnify sureties may be in the following form, or to the same effect: "This deed, made the. . . . . day of . . . . . ., in the year . . . . . ., between . . . . . (the grantor) and . . . . . (the trustee), witnesseth: that the said . . . . . (the grantor) does (or do) grant (or grant and convey) unto the said . . . . . (the trustee), the following property (here describe it): In trust to secure (here describe the debts to be secured or the sureties to be indemnified and insert covenants or any other provisions the parties may agree upon). Witness the following signature (or signatures)."

5.) Rules of the Supreme Court of Virginia

Rule 5:9(a) Notice of Appeal.

Filing Deadline; Where to File. No appeal shall be allowed unless, within 30 days after the entry of final judgment or other appealable order or decree, or within any specified extension thereof granted by this Court pursuant to Rule 5:5(a), counsel for the appellant files with the clerk of the trial court a

notice of appeal and at the same time mails or delivers a copy of such notice to all opposing counsel.

Rule 5:11. Record on Appeal: Transcript or Written Statement.

(e) *Written Statement in Lieu of Transcript.* A written statement of facts, testimony, and other incidents of the case, which may include or consist of a portion of the transcript, becomes a part of the record when:

(1) within 55 days after entry of judgment a copy of such statement is filed in the office of the clerk of the trial court. A copy must be mailed or delivered to opposing counsel on the same day that it is filed in the office of the clerk of the trial court, accompanied by notice that such statement will be presented to the trial judge no earlier than 15 days nor later than 20 days after such filing; and

(2) the statement is signed by the trial judge and filed in the office of the clerk of the trial court. The judge may sign the statement forthwith upon its presentation to him if it is signed by counsel for all parties, but if objection is made to the accuracy or completeness of the statement, it shall be signed in accordance with paragraph (g) of this Rule.

(f) The term "other incidents of the case" in subsection (e) includes motions, proffers, objections, and rulings of the trial court regarding any issue that a party intends to assign as error or otherwise address on appeal.

(g) *Objections.* Any party may object to a transcript or written statement on the ground that it is erroneous or incomplete. Notice of such objection specifying the errors alleged or deficiencies asserted shall be filed with the clerk of the trial court within

15 days after the date the notice of filing the transcript (paragraph (c) of this Rule) or within 15 days after the date the notice of filing the written statement (paragraph (e) of this Rule) is filed in the office of the clerk of the trial court or, if the transcript or written statement is filed before the notice of appeal is filed, within 10 days after the notice of appeal has been filed with the clerk of the trial court. Counsel for the objecting party shall give the trial judge prompt notice of the filing of such objections. Within 10 days after the notice of objection is filed with the clerk of the trial court, the trial judge shall:

(1) overrule the objections; or

(2) make any corrections that the trial judge deems necessary; or

(3) include any accurate additions to make the record complete; or

(4) certify the manner in which the record is incomplete; and

(5) sign the transcript or written statement.

Any time while the record remains in the office of the clerk of the trial court, the trial judge may, after notice to counsel and hearing, correct the transcript or written statement. The judge's signature on a transcript or written statement, without more, shall constitute certification that the procedural requirements of this Rule have been satisfied.

Promulgated by Order dated Friday, April 30, 2010; effective July 1, 2010.

VIRGINIA:

IN THE GENERAL DISTRICT COURT FOR FAIRFAX COUNTY

BANK OF AMERICA, NATIONAL ASSOCIATION
Plaintiff

v.

Case. No. GV13000370-00

SHERI DANIEL, et al.,
Defendants

DEFENDANT'S RESPONSE TO PLAINTIFF'S PRETRIAL MOTION FOR SUMMARY JUDGMENT OR MOTION IN LIMINE

1. Plaintiff seeks to exclude any evidence that challenges the validity of the foreclosure sale and asks the Court for a Summary Judgment. The Plaintiff asks the Court to move to a punitive phase (eviction) without review of the evidence to ascertain the validity of the foreclosure sale. To grant a Summary Judgment or Motion in Limine is to deny the Defendant due process under the law.
2. It was not the legislative intent to wrongfully foreclose on homeowners, to expedite eviction without due process and thereby conceal the wrong doing by the banks and their attorneys.
3. The legal precedents presented in the Plaintiff's motion are all historical in nature (1897, 1908, 1950, 1988, 1946, 1942, etc.). These precedents could not have imagined the

events of recent years. Not included is the most recent precedent from 2013 where Bank of America and Wells Fargo have agreed to pay billions of dollars to millions of homeowners wrongfully foreclosed upon and evicted from their homes.

4. If the General District court does not have jurisdiction [sic] try matters of title to real property as alleged in the Plaintiff's Motion, and therefore cannot hear evidence of the bank's wrongdoing, the General District Court must deny the Motion for Summary Judgment and defer to an authority that does have jurisdiction to hear the evidence and can provide due process under the law to the Defendant.

WHEREFORE, for the reason set forth above, the Defendant respectfully asks this Court to deny the Plaintiff's Motion for Summary Judgment and to deny the Plaintiff's Motion in Limine.

Respectfully submitted,

/s/ Sheri Daniel
SHERI DANIEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing ... was served by US. Mail, first class, postage pre-paid, the 6th February, 2013 to:
[DEFENDANT BY COUNSEL]

VIRGINIA: IN THE GENERAL DISTRICT COURT FOR FAIRFAX COUNTY

BANK OF AMERICA, NATIONAL ASSOCIATION, Plaintiff	)	
	)	Case No. GV13000370-00
v.	)	
SHERI DANIEL, et al. Defendants	)	

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR WRIT OF POSSESSION

Here comes Defendant, Sheri Daniel, acting pro se, respectfully requesting the Court deny the Plaintiff's Motion for Writ of Possession. Defendant has also submitted a Motion to Set Aside the Judgment of February 14, 2013, pending the whole case is heard and decided in the Court of appropriate jurisdiction.

1. On April 24, 2013 Defendant filed a Complaint/Counterclaim in the Circuit Court for Fairfax County. Pursuant to Va. Code §16.1-88.01 Counterclaims, "the Court shall render such final judgment on the whole case as the law and evidence require". On May 17, 2013, Plaintiff's counsel removed the Complaint/Counterclaim to the U.S. District Court. Since the General District Court does not have jurisdiction to hear the whole case,

Defendant requests the Court to deny the Motion for Writ of Possession and to Set Aside the Judgment and let the matter proceed in a Court of appropriate jurisdiction. An appeal from the General District Court to the Circuit Court of Fairfax County is no longer appropriate because it is the Plaintiff's counsel, not the Defendant, that has removed the case to the U.S. District Court.

2. In the hearing on February 14, 2013, Plaintiff asked the Court to exclude any evidence that challenges the validity of the foreclosure sale and asked the Court for a Summary Judgment. The Plaintiff asked the Court for a punitive action (eviction) without review of the evidence to ascertain the validity of the foreclosure sale. To grant a Summary Judgment without a right to appeal would deny the Defendant due process under the law.
3. The Court granted the Summary Judgment, did not set an appeal bond but encouraged the Defendant to appeal to the Circuit Court citing lack of jurisdiction to hear matters of title.
4. Within the 10 day appeal period, Defendant perfected the appeal (2013 CL5051) and did not post an appeal bond because none was required by the Court.
5. The Circuit Court did not "Dismiss" the appeal as the Plaintiff's counsel asserts, rather the Circuit Court remanded the case back to the General District Court to set an appeal bond.

6. At the hearing in Circuit Court on April 19, 2013, the Court remanded the case back to the General District court to set an appeal bond and ordered Bank of America to work in good faith to resolve the matter. On April 23, 2013, Defendant received an email from Plaintiff's counsel with a proposed settlement. The proposal included a requirement for a "Wells Fargo Pre-Qual". The Plaintiff knows that without rescinding the two foreclosure sales that the Defendant could not possibly Pre-qualify. The settlement offer set the Defendant up to fail. It was not a settlement offer made in good faith. Alternatively, the Plaintiff offered the "cash-for-keys" of $1,000-$2,000 to leave her home.
7. As to the statement by Plaintiff's counsel "Upon information and belief, and the instructions of this Court, the General District Court is unable to-reaccept this case and comply with the order to set an appeal bond, therefore effectively concluding the appeal upon its dismissal by the Circuit Court", Defendant disputes the accuracy. The Circuit Court did not dismiss the appeal, rather remanded it back to the General District Court. However, if this statement is true, effectively the Defendant has been denied the right to an appeal or to have a hearing on the Complaint/Counterclaim prior to judgment. It is the Plaintiff, not the Defendant, who has asked to have the matter be decided in the U.S. District Court.

8. On April 24, 2013 the Defendant determined to get a hearing filed a Complaint/Counterclaim in the Circuit Court of Fairfax County on the same and additional issues (Case No. CL 2013-07554) and a Memorandum of Lis Pendens in the Land Records of Fairfax County. The complaint was filed naming Wells Fargo Bank, N.A. (Wells Fargo) as Defendant but clearly identifies in ¶4 that Wells Fargo is acting as servicing agent for Bank of America. Copies were sent by email and by mailed U.S. Mail to Plaintiff's Counsel, BWW Law Group, LLC.
9. On May 15, 2013, upon realizing format errors made in the original Complaint/Counterclaim and upon sale of one of the properties involved, Defendant sent Plaintiff (c/o their registered agent) and Plaintiff's counsel a notice of intent to ask the Court for Leave to Amend the Complaint. Notices were sent by U.S. Mail Certified. Receipt by Mr. Rosen and Ms. Melton at BWW Law Group, LLC and Bank of America's registered agent was confirmed by the U.S.P.S.
10. On May 17, 2013, Wells Fargo, acting as servicing agent for Bank of America, now by counsel, Ms. Amy Owen, Cochran & Owen, LLC, removed the case from the Fairfax County Circuit Court to the U.S. District Court in Alexandria (Exhibit A). If BWW Law Group, LLC was not previously aware of this removal to U.S. District Court, on June 3, 2012 Defendant sent Mr. Rosen and Ms. Melton, counsel at BWW

Law Group, LLC a Notice to Opposing Counsel with a copy of the Motion to Remove.

11. A first hearing is scheduled in U.S. District Court on June 21, 2012. (Exhibit B)
12. But now comes Plaintiff by counsel, BWW Law Group, again seeking eviction prior to a hearing in the appropriate jurisdiction. The Plaintiff and Plaintiff's counsel are aware of the Complaint/Counterclaim, are aware of the pending hearing in U.S. District Court and still ask this Court to approve a punitive action (eviction) before a hearing on the matter in a Court of appropriate jurisdiction.
13. It was not the legislative intent to wrongfully foreclose on homeowners, to expedite eviction without due process and thereby conceal the wrong doing by the banks and their attorneys.
14. Since the General District Court does not have jurisdiction try matters of title to real property, and therefore cannot hear evidence of the bank's wrongdoing, the Defendant asks the General District Court to deny Plaintiff's Motion for Writ of Possession. Since the matter, at the Plaintiff's action is no longer in the Virginia courts but now in the Federal court, Defendant asks this Court to Set Aside the Summary Judgment and defer to a court that does have jurisdiction to hear the entirety of the evidence and can provide due process under the law to the Defendant.

WHEREFORE, for the reasons set forth above, the Defendant respectfully asks this Court to Set Aside the Summary Judgment and to deny the Plaintiff's Motion for Writ of Possession.

Respectfully submitted,

_____/s/_____

SHERI DANIEL
6935 Pinecrest Ave
McLean, VA 22101
703 356-2784

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Motion to Set Aside Judgment for Summary Judgment was served by U.S. Mail, first class, postage pre-paid, the 3th June, 2013 to:

[DEFENDANT BY COUNSEL]

VIRGINIA: IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

BANK OF AMERICA, N.A.	)	
Plaintiff/Appellee	)	
	)	CASE NO.
v.	)	CL-2013-0010303
	)	
SHERI DANIEL, et al	)	
Defendants/Appellants	)	

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO VACATE JUDGMEMT AND VACATE ORDER TO ISSUE WRIT AND TO RESCIND THE FORECLOSURE SALE ON THE GROUNDS OF FRAUD UPON THE COURT

Defendant, Sheri Daniel, acting pro se, respectfully submits this Motion to (1) Vacate the Judgment for Possession issued on Aug 29, 2013, (2) Vacate the Writ for Possession issued on October 29, 2013 and (3) Rescind the Foreclosure Sale on the Grounds of Fraud upon the Court.

BACKGROUND

1. The instant unlawful detainer action is based upon the Foreclosure sale which was executed based on the Loan Modification document dated September 4, 2009 and recorded in the Fairfax County Land Records on February 26, 2010 (Exhibit A).

2. On the false Loan Modification document the lender was misrepresented to be Wells Fargo Bank, N.A. when Bank of America, N.A. is the actual secured party/noteholder. The document is an *ab initio* invalid contract between the Defendant and the "lender".

3. The identity of the true lender (secured party/noteholder) was not disclosed to the Defendant at the time of executing the document.

4. Fraud related to the false Loan Modification document is timely because the Court is just now "discovering" the fraud commencing the Statute of Limitations at the time of this notice. Even though the fraudulent document was executed in 2009, the fraud is of a continuing nature since the attorneys for the Plaintiff continue to misrepresent to the court that the foreclosure sale, which is based on the numbers from the fraudulent Loan Modification document, is valid.

5. "A deed of trust to secure debts...may be in the following form, or to the same effect, and **shall** name in the first clause (i) grantor, (ii) trustee, and if applicable (iii) grantee under whose name the deed of trust is to be indexed as required by §17.1-249." Virginia Code 55-58 (emphasis added). The

fraudulent Loan modification Agreement violates this section of the Virginia Code.

6. "If any person forge a public record...wherein such attestation may be received as legal proof, or utter or attempt to employ as true, such forged record,...knowing the same to be forged, he shall be guilty of a Class 4 felony." Virginia Code 18.2-168. In the instant case, Wells Fargo Bank, N.A. forged the Loan Modification knowing they were not the lender and employed the document as true when it was recorded in the Fairfax County Land Records. Furthermore, Equity Trustees, LLC, acting as substitute Trustee (which is essentially one and the same with BWW Law Group, LLC, attorneys for Wells Fargo Bank, N.A./Bank of America, N.A.) violated this section of the law when they knowingly employed as true such a forged record to complete the foreclosure sale.

FRAUD UPON THE COURT

7. "Default judgments....upon motion of the plaintiff or judgment debtor and after reasonable notice to the opposite party, ...the court may set aside a judgment...upon the following grounds (i) fraud on the court,..." Virginia Code 8.01-428.

8. "Such a motion on the grounds of fraud on the court shall be made within two years from the date of the judgment..." Virginia Code 8.01-428. The date of the Judgment of this instant case is August 29, 2013, and the final Order in the case was issued October 29, 2013, there this Motion to Vacate is timely.

9. Allison Melton and Benjamin Rosen, the attorneys, BWW Law Group, LC counsel for Wells Fargo Bank, N.A./Bank of America, N.A. know this Loan Modification document is false and an *ab initio* invalid contract. But they have misrepresented to the Court that the foreclosure sale and subsequent Unlawful Detainer action is valid. Such misrepresentation to the court constitutes fraud upon the court.

10. The elements of fraud: 1) a false misrepresentation (the attorneys at BWW Law Group, LLC have misrepresented to the Court that the foreclosure sale was valid therefore the unlawful detainer action is valid), 2) of a material fact (Loan Modification document is *ab initio* invalid because the correct secured party/noteholder is not identified on the document and the numbers used to execute the foreclosure sale are from that document, see Exhibit B), 3) made intentionally and knowingly (the attorneys at BWW Law Group, LLC know the Loan Modification document is *ab initio* invalid), 4) with the intent to mislead (attorneys at BWW Law Group, LLC concealed the information about the invalid document so as to mislead the Court to obtain the Judgment and Writ for Possession), 5) reliance by the party mislead (court relied upon the misrepresentation by the BWW Law Group attorneys), and 6) resulting damage to the party mislead (Court denied justice to the Defendant and damaged the credibility of the Court).

11. Fraud upon the court occurs when the judicial machinery itself has been tainted, such as when an attorney, who is an officer of the court, is involved in

the perpetuation of a fraud or makes material misrepresentation to the court. In Bullock v. United State, 763 F.2d 1115, 1121 (10th Cir. 1985) the court stated "Fraud upon the court is fraud that is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, ... it is where...the impartial functions of the court have been directly corrupted. Fraud upon the court makes void the orders and judgments of that court."

12. This Court also relied upon the Federal Case 1:13-cv-00612-GBL/IDD which includes one count for fraud arising from a similar but different set of incidents related to the Rental Property next door at 6929 Pinecrest Ave. The Defendant asked the federal court for Leave to Amend to include a count for the Primary Residence (the property at issue in this unlawful detainer action) at 6935 Pinecrest Ave. but the Federal court has to date denied that request. Therefore the issues raised in this Motion have *not* been before the federal court. Therefore the case in Federal court as no bearing on this motion.

13. Defendant has filed a timely appeal with the Supreme Court of Virginia, therefore the question of finality of judgment does not apply to the instant case. See *Warren v. Pham*, Court of Appeals of Virginia, 1998.

14. Furthermore, the fraud in this case is both intrinsic and extrinsic. From *Warren v. Pham*, citing *Peet v. Peet*, 16 Va. App. 323, 326, 429 S.E.2d 487, 490 (1993) "a judgment obtained by "extrinsic fraud is void and therefore, subject to direct or collateral attack..." and continues, "'[E]xtrinsic fraud' consists

of 'conduct which prevents a fair submission of the controversy to the court'..." Id. At 327. 429 S.E.2d at 490. The actions by the attorneys for Wells Fargo Bank, N.A/Bank of America, N.A. to create piecemeal litigation and deprive the Defendant of a defense to the Unlawful Detainer case is extrinsic fraud rendering the Judgment and Writ issued by this court void.

For all the reasons set forth above, Sheri Daniel respectfully requests this court Vacate the Judgment for Possession, Vacate the Writ for Possession, Rescind the Foreclosure Sale and grant other relief to the Defendant as deemed appropriate by the court.

Respectfully submitted,

/s/ Sheri Daniel
Sheri Daniel
6935 Pinecrest Ave
McLean, VA
703 489-2656
Sheri.Great.Falls@gmail.com

No. 140205

IN THE SUPREME COURT OF VIRGINIA

SHERI DANIEL,

Defendant-Appellant,

v.

BANK OF AMERICA, NATIONAL ASSOCIATION

Plaintiff-Appellee.

Circuit Court Case No. CL2013-0010303

On Appeal from the Fairfax County Circuit Court

Honorable Robert J. Smith

PETITION FOR REHEARING

SHERI DANIEL
Pro Se
Po Box 240
McLean, VA 22101
PH: 703 489 2656
Fax: none
Sheri.great.falls@gmail.com

Appellant, Sheri Daniel, acting *pro se*, respectfully requests this Court 1) rehear the Petition for Appeal and 2) reconsider the decision to dismiss the case on the procedural ground that the Notice of Appeal was not timely filed.

Timeliness of the Petition for Rehearing

The Supreme Court of Virginia's Order dismissing the Petition on procedural grounds is dated March 21, 2014. This Petition for Rehearing is timely filed on April 2, 2014.

Petition for Rehearing

For fifteen months, this unlawful detainer case has bounced around the lower courts on procedural issues. Bank of America has made every effort to prevent the substance of why the foreclosure sale is invalid from coming before the court and the substance has not been heard. Ms. Daniel has been evicted from her home based on a fraudulent foreclosure. The substance of the case is presented in the Petition for Appeal and in the Motion to Vacate on the Grounds of Fraud Upon the Court.

Timeline Summary

Is the date of the Final Order October 29 or August 29, 2013? The two scenarios are presented below.

	Ms. Daniel's/ Appellant's Position	*Bank of America's/ Appellee's position & this Court's initial Ruling*
	October 29 Final Order	**August 29 Final Order**
August 29 2013	Order for Possession with a condition that allowed the Trial judge to reconsider pending the decision in the Federal Court. *It was the intent of the Order to retain jurisdiction until the Opinion of the Federal Court.*	**Final Order** for Possession, per Rule 1:1 "shall remain under the control of the trial court...for 21 days and no longer."
September19 2013		Last day Trial Court had jurisdiction.
October 21 2013	Opinion from Federal Court.	
October 29 2013	**Final Order** by Trial Court judge. As per Rule 1:1 Trial Court jurisdiction ended	Trial court does not have jurisdiction to issue a Writ, but he did

	21 days after this **Final Order**.
November 5 2013	Notice of Appeal timely filed.
November14 2013	Motion to Vacate on Grounds of Fraud Upon the court filed in Circuit Court. Timely within 2 years of judgment
November18 2013	Trial Court judge ruled jurisdiction is with Supreme Court (validating the appeal was timely) therefore he could not hear the Motion to Vacate.
January 2014	Trial Court judge flip flops & signs Statement of Facts by opposing counsel which asserts that appeal was not timely filed.
March 2014	Supreme Court rules appeal was not timely filed.

1. For the Supreme court to dismiss the case "because appellant failed to timely file the notice of appeal", the Court must have accepted August 29, 2013 as the date of Final Order. But if August 29 is the [sic] deemed the date of Final Order, then the Trial Court did not have jurisdiction after September 19, 2013, a month *before* the Opinion was issued by the Federal Court. At the hearing on August 29, 2013, the judge asked the opposing counsel what happens if we evict Ms. Daniel and she prevails in Federal Court? The opposing counsel answered that we will owe a lot in damages. It was clearly the intent of the Trial Court to retain jurisdiction to reconsider the judgment until after the Opinion in the Federal Court.[3]

2. Furthermore, the Trial Court's Order on November 18, 2013, a.) validated the appeal and b.) validated the timely filing of the appeal by stating that the Supreme Court had jurisdiction to hear the Motion to Vacate.

In November 2013, if the appeal was not timely filed, the Trial Court should have ruled as such and heard the Motion to Vacate on the Grounds of Fraud Upon the Court. *But he didn't. He refused to hear the Motion.*

It wasn't until January 2014 that the Trial Court asserted that August 29 was the date of Final Order, flip flopping on the previous position. The Trial Court signed the opposing counsel's Statement of

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[3] Note: The case in Federal Court, U.S. Court of Appeals for the 4th Circuit, case #13-2426 is still pending at this time of this writing.

Facts that states the date of Final Order was August 29 and therefore the appeal was *not* timely filed.

The end result of the flip flopping is Ms. Daniel was denied a hearing on the substance of the case.

Grounds for Rehearing the Petition

1. **Dismissal is contrary to precedent and the Rules of the Supreme Court of Virginia.**

A.) The procedural dismissal is contrary to precedent by the Court of Appeals in Virginia which stated "An order that retains jurisdiction to reconsider the judgment or to address other matters still pending is not a final order, for purposes of statute and rule requiring notice of appeal to be filed within 30 days from the date of any final judgment, or order or decree". *(West's V.C.A. § 8.01-675.3, Supreme Court Rule 5A:6 and Alexander v. Flowers, 51 Va.App.404 (2008)).* The trial court Order dated August 29, 2013 included a condition by which the trial court retained jurisdiction to reconsider the Order pending the outcome in the Federal Court. The Order on August 29, 2013 was not a Final Order.

B.) For this court to dismiss the case on the grounds of untimely filing of the notice of appeal, the Court must have accepted August 29, 2013 as the date of Final Order. As shown in the Timeline Summary, if August 29, 2013 is accepted as the date of Final Order, then the Trial Court no longer had jurisdiction to Order the Writ, but he did.

2. The Trial Court judge flip flopped as to which Order was the Final Order

In the November 18, 2013 Order, the Trial Court ruled the Supreme Court had jurisdiction to hear the Motion to Vacate on the Grounds of Fraud Upon the Court, thereby validating the appeal and the timeliness of the filing of the appeal.

But in January 2014, the Trial court signed the opposing Counsel's Statement of Facts which states the appeal was not timely filed.

By flip flopping positions, the Trial Court denied the appellant, Ms. Daniel, a hearing on the Motion to Vacate.

Pursuant to Virginia Code 8.01-428(A) "Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree". The Motion to Vacate on the Grounds of Fraud Upon the Court is timely and will be for another year and a half. If the Supreme Court will not hear it, does Ms. Daniel need to refile in the Circuit Court and request a different judge to get a hearing on the substance?

3. Exceptional Importance and Precedential Value

The Motion to Vacate on the Grounds of Fraud Upon the Court is true. It may be difficult to believe prior to reviewing the documents but it is true. It needs to be heard. The courts and Ms. Daniel have been

defrauded and Ms. Daniel has been evicted from her home with false documents. It is of exceptional importance to the Courts, to the Land Records and to the residents of the Commonwealth who have suffered the same fraud and harm that the Appellant has suffered. The case has significant precedential value.

CONCLUSION AND REQUEST FOR RELIEF

Ms. Daniel wants nothing more than a fair and impartial hearing on the *substance* of the case.

Respectfully, Appellant Sheri Daniel asks this Court to 1) rehear the Petition for Appeal, 2) to accept that it was the intent of the Trial Court to retain jurisdiction to reconsider the Judgment until after the decision in Federal Court and therefore October 29, 2013 was the date of the Final Order, 3) that this appeal was timely filed and 4) to grant Ms. Daniel the appeal to present the substance of the case.

This case has significant precedential value because of the likelihood there are similar false *Loan Modification* documents used to execute invalid foreclosure sales and filed in the Land Records throughout Virginia.

For all the reasons set forth above, and for the precedential value, Appellant respectfully asks this Court to GRANT THE APPEAL. In addition, Appellant Ms. Daniel respectfully asks this Court to hear the "*Motion to Vacate On the Grounds of Fraud Upon the Court*".

In the alternative, if the Supreme Court will not grant the Appeal or hear the Motion to Vacate on the Grounds of Fraud Upon the Court, Ms. Daniel respectfully asks this Court to remand the case back to the Circuit Court to have the Motion to Vacate on the Grounds of Fraud Upon the Court heard by a different judge than the Trial Judge.

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CERTIFICATE

[SIGNED]

April 2, 2014 Sheri Daniel, Pro se