

ORIGINAL

IN THE SUPREME COURT OF OHIO

Akim M. Rahman

Appellant,

Vs.

Wells Fargo Bank N.A.

Appellee

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Date: July 05 of 2013

Case No. GEN-13-1008

On Appeal from the
Franklin County Court,
10th Appellate District

Court of Appeals
Case No. 13-AP-376, which relied on
11-CV-1095

MEMORANDUM IN SUPPORT OF JURISDICTION
OF THE APPELLANT AKIM M. RAHMAN

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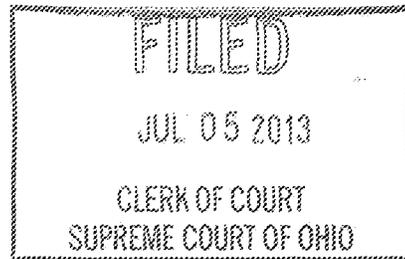


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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION**

This cause presents five critical issues for current homeowners and for future homeowners in Ohio where homeowners have or will have their homes collateral with any mortgage companies such as the Wells Fargo Bank N.A., the Appellee in the captioned case. The issues are

- (1) Whether abusive acts including perpetrated trespass by any mortgage company while a home under foreclosure are actionable and subjects to liability for damages & exemplary damage
- (2) Whether improper application of Civ. R. causes the ruling to be defective, which can undermine public interest and encourage wrongdoers, which can result a higher social costs
- (3) Whether a Court can disclaim legal identity between itself and mortgage company in order to evade court obligations - application of exclusionary rule in captioned case is in question
- (4) Whether requirement of posting bond in captioned case violates the right to *due process of law* where it creates the appeal impossible or overly burdensome
- (5) Whether denial of Constitutional rights and of rights established by the Civ. R. for a jury trial fulfills the requirement set forth for a “jurisdictional appeal” under the S.Ct.Prac.R.5.02

In captioned case, since these issues arise from the decision of the 10th District Appellate Court, June 17 of 2013, which relied on ruling of the Common Pleas Court, May 02 of 2013, for implementation if the condition set forth is unmet, addressing both rulings in this memorandum becomes paramount. The Court rulings are found to be defective and *erred* from improper application of Civ. R. 15 (B), 38 & 39 where the rights established by the Civ. R. for a jury trial were denied. This ruling will cause higher social cost and affect every government enforcement entity in Ohio, and touch the lives of tens and thousands of homeowners pending foreclosures, if it is allowed to stand.

With these pending consequences, the bond posting requirement is unreasonable (because the home itself is in collateral) and excessive where the current appeal arises from post decision of Appellate, which arose from post judgment of Common Pleas Court, which relied on post ruling of bench trial where a ruling favoring for a bench trial was rendered by judge Bender without merit.

Addressing the above five critical issues, this appeal is a “jurisdictional appeals” under Article IV, Section 2 (B) (2) (e), Section 2 (B) (2) (a) (iii) and Section 2 (B) (1) (e) of Ohio Constitution and I proceed explaining the reasons where I first address how this case involves a question of public or great general interest pursuant to Article IV, Section 2 (B) (2) (e) of Ohio Constitution.

The Tenth Appellate District Court has granted Appellant *motion for a stay* with a condition set forth of a bond posting (an amount of \$240,000) with the trial court, where the home mortgage balance was little over \$150,000 and the decision relied on Court ruling that is found to be defective. This decision sets forth a precedent that has excluded the entire subject matter of counter claim and improper application of Civ. R. Because here the decisions are without sanctions for the breach of laws, the result of these decisions would be preposterous in any legal system in Franklin County and beyond and it would welcome its repetition and the laws of property protection would be ineffective.

This excessive or any bond requirement, in this case, violates Open Court Clause of Ohio Constitution because home itself is in collateral, which causes dual or cruel punishment because the homeowner is being charged interests by the mortgage company in one hand. On other hand, posting bond would be another similar financial burden. Therefore, if implemented, the decision will seize public interests and confiscate philosophical aspects of legal system in Ohio. These rulings cause miscarriages of justice and in the future, wrongdoers will be benefited by applying this technique. Therefore, public interest will be undermined as years to come. If allowed to stand, the rulings will undermine the rights of homeowners that are generally established by the mortgage-contract between homeowner and mortgage-company. Since Appellate ruling relied on the Court rulings (See: Appendix A & B), the decision would ravage the implementation of provisions, *especially*, the 15(B), the 38 and the 39 of the Civ. R. in judicial system. It would welcome willful acts of trespassing home(s) by any mortgage-company during foreclosure and beyond. The wrongdoers will try justifying its abuses and will go away with it using the reference of the captioned case unless the current court

reverses it. It would cause repetitious similar abuses in Franklin County and beyond in Ohio. It would increase social cost of Ohio and undermine the rights & safeties of Ohio homeowners or future Ohio homeowners as years to come. Lastly, if Appellate decision stands, process of judicial system would be chaotic and uncertain and would lack finality, as a result, it would enhance social cost of Ohio

The appeal issue before Appellate was whether rulings of Court *erred*. *Specifically*, a) whether Court improperly applied Civ. R. 15(B), 38 and 39, b) whether Court and bench trial had maintained admirations for Appellee's abusive acts without questioning whether it violates the aspects of judicial philosophy of civil cases in Ohio; c) whether Court disclaimed the legal identity between itself and mortgage company in order to evade court obligations; whether court's denial makes laws ineffective.

The law is clear that it is both the province and the obligation of the trial court to assess and determine all matters of credibility, *Matter of Liccione v. Miichael A. 65 NY2d 826, 482 NE2d 917, 493 NYS2d 121 (1985), Morgan v. McCaffrey 14 AD3d 670, 789 NYS2d 274 (2nd Dept. 2005)*. It is for the trial court to apply and resolve issues of witness credibility. However, the bench trial willfully declined to include the issue of perpetrated trespass in its ruling and disclaimed taking action (See: Tr.). In ruling, Court had followed bench trial without addressing abusive acts. The Court decision sets forth a precedent that would exclude an entire subject matter from Constitutional and legal rights of homeowners. It would exclude the entire subject matter of counter claims in any foreclosures cases. Here the court and bench both disclaim the legal identity. The result of this rule would be preposterous if it is implemented because it would solely benefit mortgage company and increase the social cost and undermine the public or great general interest in Franklin County and beyond in Ohio.

Since monetary counter claim of Appellant in captioned case was \$600,000 plus other costs as of March 11 of 2013 and since this claim was ignored in rulings without merit, this practice in judicial system in Ohio will continue unless the current court takes preventive measures as it was taken by the SUPREME COURT OF NEW YORK, SUFFOLK COUNTY, Wells Fargo, Plaintiff v Steven Tyson

et al. (2010 NY Slip Op 20079; 2010 N.Y. Misc. LEXIS 410, March 5, 2010, Decided). The Supreme Court of New York has set forth an example to follow in New York and beyond for years to come. Here the Court decided granting exemplary damages and other cost over \$160,000. The ruling was:

The Court finds the appropriate measure of damages for the trespass to Defendant's possessory interest in the property to be in the amount of \$ 200.00. The Court further finds that Defendant is entitled to recover \$ 4,892.00 representing the value of the personality lost as a direct result of Plaintiff's actions in trespass. Finally, the Court finds that Defendant is entitled to recover exemplary damages from Plaintiff in the amount of \$ 150,000.00.

However, rather addressing the issues before it, Appellate has improperly granted Appellee's motion for extension of time for filing Appellee's brief and then strategically ruled on Appellant's motion for stay. These judicial maneuvers and the decision of Appellate undermine the philosophy of judicial neutrality in Franklin County and beyond. It further threatens the structure of agreement between homeowners & mortgage financiers in general in mortgage financial market in Ohio. By its ruling, the Appellate undermines legislative intent in aspects of Open Court Clause, due process of law and ignores the plain meaning of constitutional rights and laws and creates its own unsupported view. It creates barriers promoting public interest pursuant to Article IV, Section 2(B) (2) (e) of Ohio Constitution. The rulings of Common Pleas and bench trial have created a constitutional imbalance and a Civ. R. imbalance by denying the rights and by improperly applying the provisions of Civ. R. 15(B). These decisions offend provisions of the Civ. R. and Ohio's constitutional scheme by denying the rights for jury trial established by Civ. R. 38 and Civ. R. 39 and by the Constitution. In this aspect, the lower courts interpretations of Civ. R. 38 & 39 and denial of its application impair functioning of the Civ. R. in Franklin County in Ohio. It makes laws of protecting home-property to be ineffective

These decisions would invite a return to *pre era* days of "*might is right* – Wells Fargo can do whatever it wants because it is the most powerful entity in home finance market" in civilized society in Ohio and beyond as years to come. The Supreme Court of New York has ruled defusing the move "*might is right*" and has penalized Wells Fargo, with exactly similar perpetrated trespass offense,

Wells Fargo, Plaintiff v Steven E. Tyson et al. (2010). Since the Appellee has repeated the offense not in New York but now in Ohio, it is now reasonable to believe that the weight of the punishment executed by the New York Court was not adequate to prevent Wells Fargo committing same offense beyond State of New York. In this aspect, appellate decision would encourage the Wells Fargo to continue its abuses in Franklin County and beyond unless superior court reverses it and grants the highest exemplary damage cost so that Wells Fargo does not repeat its abuses in Ohio and beyond.

Therefore, the current court has opportunity setting an example for the greater interests of homeowners in Ohio and beyond so that this time Appellee stops abusive acts for good. As philosopher Francis's Bacon once said "nothing exists but atoms, space and laws; and the law of the laws is that of evolution and dissolution everywhere". We the humans come in this delightful world and then we leave it as we are forced to --- and this process is a continuous one since the beginning of humans lives, therefore, our existences are temporary. However, granting a judgment by the current court as vested by law and Constitution will be an example for the time to come. It will be the law of the laws that will live and exist forever where people like the Appellant, in the captioned case, will be benefited and the violators will be discouraged for good in Buckeye state, Ohio and beyond.

Finally, this case involves a substantial constitutional question. The decision, *especially*, part of "bond requirement" of Appellate offends Open Court Clause of Ohio Constitution. The clause provides "[t]hat all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." This Clause was designed "to ensure that all persons would have access to justice through courts", which exists in various forms in thirty-eight states, including State of Ohio.

Although this clause does not explicitly appear in the US Constitution, the concept of open access to courts is implicit in several provisions of the federal Constitution and has long been recognized in federal jurisprudence. As the Sixth Circuit Court of Appeals succinctly explained "It is

beyond dispute that the right of access to courts is a fundamental right protected by Constitution.”
Graham v. National Collegiate Athletic Ass’n, 804 F.2d 953, 959 (6th Cir.1986) See: Appendix C.

The right of access in its most formal manifestation protects a person's right to physically access the court system. Without more, however, such an important right would ring hollow in the halls of justice. See *Chambers*, 207 U.S. at 148, 28 S.Ct. at 35. Access to courts does not only protect one's right to physically enter courthouse but also insures that the access to courts will be “adequate, effective and meaningful.” *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 1495, 52 L.Ed.2d 72 (1977); *Swekel v. City of River Rouge*, 119 F.3d 1259, 1261-62 (6th Cir. 1997), *cert. denied sub nom. Swekel v. Harrington*, 522 U.S. 1047 (1998). For example, Florida courts have determined that Florida’s Open Courts Clause restricts the creation of financial barriers to court access. See *G.B.B. Investments, Inc. v. Hinterkopf*, 343 So.2d 899, 901 (Fla. 3d DCA 1977) (holding that constitutional right of access to courts sharply restricts the imposition of financial barriers to asserting claims and defenses in court). In *Psychiatric Associates v. Siegel*, Florida Supreme Court held that statutes requiring persons to post bond sufficient to cover costs and attorney fees before their action can be prosecuted violates their constitutional right of access to courts, *Psychiatric Associates v. Siegel*, 610 So.2d 419, 425 (Fla. 1992). Any bond requirement in this case undermines accessing to legal system.

Therefore, promoting the purposes and preserving integrity of Open Court Clause, this court must grant jurisdiction to hear this case and review erroneous and dangerous decisions of the Court, the bench trial and the Appellate in the captioned case. It would safeguard homeowners’ interests.

Regards to perpetrated trespass by Appellee, there was no Court Order to my knowledge, and the Court failed to address it, contradicts with the Amendment IV of US Constitution, which says

“The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated

Appellee had searched the cabinets, threw papers on the floor, turned off water line, electric power etc.

These abusive acts would be reproductive unless the current Court takes preventive measures.

In regards to “Jury trial demand”, appellate decision is an ominous one because setting forth bond requirement by the appellate undermines its advocacy for safeguarding the constitutional rights. The Amendment VII of the US Constitution says

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ... a jury shall be otherwise re-examined in any Court of

Therefore, it clearly puts the safeguarding duty of the appellate backward not logically forward by knowing the fact that the Appellee has strategically failed filing its brief with Appellate. Because the violations of Civ. R. 15(B), Civ. R. 38 and Civ. R. 39 in the Court rulings are undisputable in the captioned case and the denial of constitutional rights are real. In this aspects, Article IV, Section 2 (B) 2 (a) (iii) of the Ohio Constitution says

Supreme Court shall have appellate jurisdiction in appeals from the Courts of Appeals as a matter of right in cases involving questions arising under the constitution of the United States or of this state”.

Therefore, promoting the purposes and preserving the integrity of the clause under Article IV, Section 2 (B) 2(a) (iii) of Ohio Constitution, this court must grant jurisdiction to hear this case and review erroneous and dangerous decisions of Appellate and rulings of lower courts.

On further jurisdictional issue, the current Court has absolute authority hearing the captioned case under the Article IV, Section 2 (B) (1) (e) of the Ohio Constitution were the clause says

The Supreme Court shall have original jurisdiction in *Procedendo*

The clause of the Article IV, Section 2 (B) (1) (e) of Ohio Constitution bestows authority of current court on a writ issuing out from it to an inferior court authorizing or directing the inferior court to act upon certain matters (as the remitting of a cause for trial or the entry of a judgment in accordance with a mandate of the superior court). In this aspects, since lower courts have violated Civ. R. 15(B), Civ. R. 38 and Civ. R. 39 and denied Constitutional rights and since the lower courts disclaimed the legal identity between itself and the Appellee, the current court should grant the jurisdiction under Article IV Section 2 (B) (1) (e) to hear the case. Furthermore, the current court should review the erroneous

and dangerous decision of the Court rulings on which the Appellate decision relied on. So the improper application of provisions of Civ. R. in Franklin County cannot continue as years to come. Since the bench trial was an absolute setup where the ruling was bribed (See: Tr.) in my view, promoting the purposes and preserving the integrity of legal system in Franklin County for assurance of safety and security of homeowners, its real property and to protect its rights, this court must grant jurisdiction to hear this case and review the decision of bench trial by cross examining it with the transcript of the bench trial and other evidences of the case.

In sum, because of strategically ignoring abusive acts including perpetrated trespass in court rulings, this case puts in issue the essence of homeowners (borrowers) and the mortgage companies (financers) and the fate the both parties business relations, thereby affecting every law enforcement agencies and the judicial systems that are authorized to punish wrongdoers and to ensure safety of homeowners in Ohio. To promote the purposes and preserve the integrity of business, to assure safety and security of homeowners, its real property and to protect its rights, this court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the Court of Appeals.

STATEMENT OF THE CASE AND FACTS

This appeal arises from out of a post-judgment of the 10th District Appellate Court, which arose from out of a post-judgment of Common Pleas Court, which arose from out of post-ruling of the Bench Trial where the proclivity of bench trial arose from out of a post-ruling, decided by then Judge Bender on the bench of the Court where the “jury trial rights” were never waived by the Appellant. These rulings were on the issues of

- A) A foreclosure commencement of home filed by Appellee in January of 2011. Appellant believes the commencement was *too fast* and motivational and abusive.
- B) Appellee trespassed home where locks, doors were broken & damages were caused, puppy dog was tied up where counter claims was filed and was amended as per Civ. R. 15 (B)

- C) The ongoing psychological trauma and emotional distresses are the results of perpetrated trespass and of a lengthy foreclosure proceeding

However, the rulings of the bench and then the Court have ignored addressing all the issues in its rulings without merit even though the captioned case is a civil suit. The rulings of the Court and the bench trial erred from

- a) denial of right of jury trial under the Civ. R. 38 and Civ. R. 39 and improper application of Civ. R. 15(B) where counter claim was available on the record
- b) Assigning case to bench trial, because the injury damages claim of perpetrated trespass was over \$500,000.00, which takes away jurisdiction authority of Magistrate trial
- c) denial of Constitutional rights ... *to have compulsory process for obtaining witnesses* ... Appellant is a *Pro Se*, on the same token, Appellant is a witness - Appellant has dual roles in the captioned case, however, the right to be witness under oath was denied

Since the foreclosure commencement, preparatory acts for trespass and then perpetrated trespassed etc. did not happen at once, all these incidents were not recorded in appellant initial pleading. However, *subsequently*, the Court and parties were informed on the complete pleading under the Civ. R. 15 (B). But the Court failed acknowledging it as a complete pleading. The fact is that the bench did not observe Court's own ruling rendered by Judge Travis on time slot arrangement and the Appellant was barred cross examining the Appellee witness. Also, Appellant was never allowed to present its side as a witness where Appellant is *Pro Se*, which contradicts to Constitutional rights.

Despite above facts, the Court had ruled foreclosed home with unsupported Courts' views where the perpetrated trespass was absolutely ignored, issues of improper application of Civ. R. were over looked. The rulings of the Court, which relied on ruling of the bench trial was appealed with the 10th District Appeals Court. And accordingly, Appellant brief was filed with the Appellate on May 29 of 2013 and Appellee's brief was due. Meanwhile, appellee filed motion to extend the due date of its brief with a lame excuse. Motion was granted on the next day of filing without merit, which contradicts the Local R. 7 requirement. A motion for reconsideration was filed by the appellant.

On June 17 of 2013, Appellate ruled on appellant's motion for stay and set forth condition of posting bond, which makes the ruling absolutely relied on Common Pleas Court ruling even though the Common Pleas ruling *erred* from improper application of Civ. R. 15(B), Civ. R. 38 and Civ. R. 39. Therefore, appellate ruling is defective because it relied on ruling of the Common Pleas Court, which has improperly applied Civ. R. provisions and denied the Constitutional rights for jury trial.

In support of its position on these issues, the appellant presents the following arguments.

ARGUMENT IN SUPPORT OF THE PROPOSITIONS OF LAW

Proposition of Law No. I:

Counter claim was complete *prior* to bench and court rulings pursuant to Civ. R. 15 (B)

The Civ. R. 15 (B) clearly says

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

In addition to various motions filed with Court, in bench trial on the record, even though the Appellant was *barred* bringing up the issue of counter claim, Appellant had pointed out about damage costs & exemplary damage cost in dollars plus other costs categorically in the bench trial (See; Tr.) in fulfilling Civ. R. 15 (B) requirements. Police reports were also filed with the Court and copies were provided to the attorney of Appellee. Since the Appellee has replaced its attorney for at least ten times, it has created communication gaps. Therefore, a copy of the New York Supreme Court ruling was filed with the Court, Wells Fargo, *Plaintiff v. Steven E. Tyson et.al. Defendants*).

Now the question is: do all the aforementioned efforts on establishing an Amended and Supplemental Pleadings in the captioned case comply with the requirements of the Civ. R. 15(B)?

The Civ. R. 15(B) further says

Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment. Failure to amend as provided herein does not affect the result of the trial of these issues.

The cursory inspection clearly confirms that this issue was raised before the bench trial. Several motions were filed with Court *prior* to and even after the ruling. The Court records further suggests that since the incidents did not happen at once, the necessity causing them to conform to the evidence was an evident and accordingly it was fulfilled by the Appellant. The Civ. R. 15 (B) suggests how the Court and the trial bench may proceed with? The Civ. R. 15(B) says

..... the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be sub-served thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

However, neither bench nor Court ruling has addressed the issue of abuses in its ruling, which contradicts the ruling of Wells Fargo, *Plaintiff v. Steven E. Tyson, et al.* The bench trial has used exclusionary rule, which contradicts the ruling of Supreme Court. *See Scott*, 524 U.S. at 369; *Lopez-Mendoza*, 468 U.S. at 1050; *Janis*, 428 U.S. at 460; *Calandra*, 414 U.S. at 354; and 578 F.3d 627, 630 (7th Cir. 2009). Therefore, if it is allowed to stand, the Court rulings will encourage the Appellee to repeat its abuses and will continue as it has done in State of New York, Wells Fargo, *Plaintiff v. Steven E. Tyson, et al.*, and now it has extended it in of Ohio (Wells Fargo Bank v. Rahman, Akim). In other words, if Appellee's abuses are not interrupted by any decision of the Court imposing high penalties or by any some other fashions, justice will not be served and the abuses will continue integrally and as a result, the social cost will be skyrocketing as years to come. It is fair to say here that the amount of exemplary damages cost (penalties) \$150,000.00, Wells Fargo, *Plaintiff v. Steven E. Tyson, et al.*, was not adequate as a measure preventing it. Therefore, the repetitious abuses were extended in home foreclosure cases in Ohio where Appellee is the actor in both cases.

The Appellee has failed objecting Appellant's counter claim on the record (See Tr.). However, it was a requirement under the provision of the Civ. R. 15 (B) where the provision says

... and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits.

Therefore, bench roles in the trial on the issue under provisions become provocative, delusive and dubious in course of law and in terms of social values. The Civ. R. 15 (B) further continues and says

“The court may grant a continuance to enable the objecting party to meet such evidence”.

Under the provision, bench trial had opportunity to press on appellee-attorney on producing its evidences that justifies its objection in one hand. On other hand, bench had opportunity granting Appellant a continuance to enable attorney-appellee meeting such evidence. Since the Appellee failed the test (See: Tr.), the bench could have granted a continuance to Appellant and the ruling of the trial bench could have been granted Appellant’s opening statement, cross examination and closing statement (counter claim) as Amendment and Supplemental Pleadings Appellant and it would have been treated in all respects as if they had been raised in pleadings. The Civ. R. 15 (B) provision says,

When issues not raised ..., they shall be treated in all respects as if they had been raised in the pleadings

Therefore, in captioned case, provision of Civ. R. 15(B) is violated and therefore, the ruling of the bench *erred* and it is found to be defective. In this aspect, Court of Common Pleas had opportunity to correct bench errors, defects and its violations under the provisions. However, rather addressing these issues, in response to “motion to object bench ruling” filed by Appellant on time, Court absolutely relied on bench ruling and rendered Court decision against the Appellant. If the Court had corrected the bench’s errors, defects and implemented the provisions of Civ. R. in its review, the ruling would have gone in Appellant’s favor and justice could have been served without prejudice. As a result, the abuses would have been discouraged, penalties would have been imposed as it was rendered by Supreme Court ruling, Wells Fargo, *Plaintiff v. Steven E. Tyson, et al.* and an adequate penalty could have ensured a lower or not at all social costs in Ohio. Safety of property would have been restored.

Proposition of Law No. II

The jury trial was mandatory pursuant to Civ. R. 38 and Civ. R. 39; right was never waived

The Civ. R. 38 (A) says

Right preserved. The right to trial by jury shall be preserved to the parties inviolate.

The Civ. R. 39 (A) (1) clearly says

When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury...

The Court record should show that June 21 & 22 of 2012, Appellant filed motions for jury trial under the Civ. R. 38 and under the US Constitutional rights (Amendment VII). However, Court decision (by Judge Bender) for bench trial was without merit where the Court failed applying the Civ. R. 38 and Civ. R. 39 (A) (1) in reviewing & deciding Appellant's motions. The Court records should uphold that the Appellant has never waived the rights of jury trial in the captioned case in any form in any time. However, the Court ruling by Judge Bender, decided for the bench trial without mentioning the basis of such ruling. See: Appendix D. The Civ. R. 38(B) says

Any party may demand a trial by jury on any issue tri-able of right by a jury by serving upon the other parties a demand therefor at any time after the commencement of the action...

The Court record shows that the jury trial was demanded by the Appellant in various forms. Court record further shows that Elizabeth Fuller, predecessor of current attorney, had filed Reply Memo to Appellant's motion where it had raised objection to jury trial. This fact ratifies that jury trial was demanded in writing and it was expressly known to Appellee and to the Court and to parties on the record. Therefore, rather questioning whether the current attorney knew it, it stands out that Appellant is in compliance with the Civ. R. 5. Therefore, it can absolutely be said that the Appellant has fulfilled its responsibility under the provisions establishing its demand for jury trial in the captioned case.

The Court rulings by Judge Bender and Judge Travis on this issue have caused miscarriages of justice in the captioned case. The Civ. R. 38 (D) says

The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(D) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

The Civ. R. 39 (A) (1) clearly says

When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury

Appellant has fulfilled its responsibility and is in compliance with the Civ. R. 38, Civ. R. 5 and Civ. R. 15(B). The Civ. R. 38(D) requires meeting the provision of the Civ. R. 5(D) where the rule says

All documents, after the original complaint, required to be served upon a party shall be filed with the court within three days after service, but depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be

Court record ratifies the requirements of Civ. R. 5(D) were absolutely met. The Civ. R. 38(D) says

The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(D) constitutes a waiver by him of trial by jury.....

Since Court records show that Appellant is in absolute compliance with the provisions and since the Appellee as of today has not yet raised any questions of Appellant's failure in this aspect and since the Court record as of today does not hold any records in the docket to support otherwise, it upholds that the provisions of Civ. R 38 (D) and Civ. R 5(D) were followed. The part of Civ. R. 38 (D) says
---- A demand for trial by jury made as herein provided may.....without the consent of the parties

Under Civ. R. 38(D), the discretion of withdrawing jury trial demand depends on consent of both parties. In this perspective, the Appellant once again affirms that my jury trial demand has never been waived by me in any form in anytime. This affirmation confirms that the Court rulings *erred* from improperly applying the provision of Civ. R. 39 (A) (1). The R. 39(A) clearly says

When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury

Therefore, Judge Bender's ruling was based on one party interest and with one party's consent; and Judge Travis ruling on bench trial and its basis "waived jury trial" was a plain *error* or omission of *error*, which has caused a miscarriage of justice. These decisions will encourage Appellee for

repetitious wrongful actions because now it believes it can get away from its illegal acts where its influences can buy whatever it wants as it has done so in bench trial proceeding. Therefore, this plain error in rulings cause a higher social cost and undermines judicial philosophy in general.

Proposition of Law No. III: Appellee has failed filing brief pursuant to Local R. 7 (A) & (B)

Appellee has not yet filed its brief. Appellant brief was filed on May 29 of 2013. Appellee's motion with a lame excuse for extension was granted, which contradicts Local R. 7 (A) & (B).

On June 17 of 2013, Appellate ruled on appellant's motion for stay and set forth condition of posting bond. Here Appellate and Counsel of the Appellee acted strategically based on conspiracy theory, which contradicts the Local Rule 7 (A) & (B) of the 10th District Appellate Court, which was crafted pursuant to Section 5(B), Article IV, Ohio Constitution, to supplement the Ohio Rules of Appellate Procedure and Ohio Rules of Civil Procedure. It has violated ethical code in judicial system.

CONCLUSION

For the reasons discussed above, this case involves matters of public, *especially*, homeowners and future homeowners in Ohio, great general interest and a substantial constitutional question. Furthermore, since appellate decision relied on Court ruling where Civ. R. provisions were improperly applied, it would continue repeating the miscarriage of justice, which would encourage wrongdoers and it would cause higher social cost unless the superior court renders ruling of preventive measures in both utilitarian and retributive perspectives in Ohio. Here the effectiveness of the laws protecting home-property are on the line. Therefore, appellant requests this Honorable Court to accept this case so that the important issues presented in this memorandum will be reviewed on the merits.

Respectfully submitted

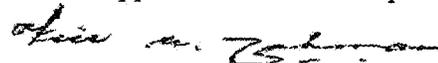


Akim Rahman, Ph.D.

Certificate of Service

I certify that a copy of this Memorandum was sent U.S. mail to appellee attn.: John Kopf

July 05, 2013



IN THE COURT OF APPEALS OF OHIO

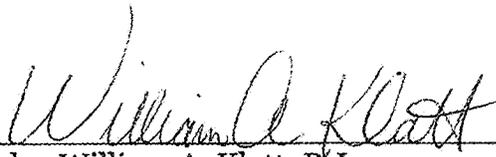
TENTH APPELLATE DISTRICT

Appendix A

Wells Fargo Bank, N.A., :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 13AP-376
 :
 Akim Rahman, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

JOURNAL ENTRY

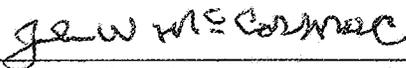
Appellant's May 8, 2013 motion for a stay of execution of the trial court judgment pending appeal is granted conditioned upon appellant's posting with the clerk of the trial court not later than June 24, 2013, a supersedeas or cash bond in the amount of \$240,000.



Judge William A. Klatt, P.J.



Judge Lisa L. Sadler



Judge John W. McCormac, retired of the Tenth Appellate District, assigned to active duty under the authority of Section 6(C), Article IV, Ohio Constitution.

cc: Clerk, Court of Appeals
Clerk, Civil Division



IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Appendix B

Wells Fargo Bank, N.A.,

Plaintiff,

v.

Akim Rahman, et al.,

Defendants.

Case No. 11-CV-1095

Judge Alan Travis

FINAL JUDGMENT ENTRY AND DECREE IN FORECLOSURE

On May 2, 2013, the Court issued its decision adopting the Magistrate’s Decision dated March 11, 2013, which determined after a bench trial on March 11, 2013, that Plaintiff Wells Fargo Bank, N.A. (“Wells Fargo”) is entitled to judgment on the claims of the Complaint to obtain judgment upon the Note described in the Complaint and to foreclose the lien of the Mortgage securing the obligation of such Note upon the real estate described herein. This matter is now before the Court for entry of the final judgment and decree of foreclosure.

The Court finds that the defendant Franklin County Treasurer (“Treasurer”) filed an Answer but did not appear for trial. However, to the extent that there are any outstanding taxes or assessments now due that are liens upon the real estate, those liens are senior in priority to Wells Fargo’s interest in the Mortgage. The exact amount of said taxes and assessments is unascertainable at this time, but will be determined at the time of the Sheriff’s sale of said premises for which amount the Franklin County Treasurer has good and valid liens.

The Court finds that all necessary parties have been properly served and are properly before the Court. The Court finds that Defendants Jane Doe, name unknown, spouse of Akim Rahman, JP Morgan Chase Bank, N.A., and Hoffman Farms Homeowners’ Association, Inc.

were served with process and the Complaint but have failed to plead or otherwise defend, did not appear for trial, and are in default.

The Court finds that Defendant Akim Rahman ("Rahman") was served with process and the Complaint and appeared for trial. Rahman executed a note dated December 11, 2003 ("Note"), in the principal amount of \$200,168.00 payable to Wells Fargo Home Mortgage, Inc. ("WFHM") and a mortgage dated December 11, 2003 ("Mortgage"). WFHM merged into Wells Fargo, and Wells Fargo is the party entitled to enforce the Note and Mortgage.

The Court finds that Rahman defaulted under the Note by failing to make payments when due, and that there is due and owing to Wells Fargo from Rahman upon the Note the principal sum of \$178,333.81, together with interest at the rate of 5.25% per annum from and after July 1, 2010, plus advances for taxes and insurance totaling \$29,773.56 as of the trial date, plus costs for property inspections totaling \$380.00 as of the trial date, plus court costs and such additional advances for taxes, insurance and other charges, as allowed by law or under the Note or Mortgage.

The Court finds that the Note is secured by the Mortgage, which Mortgage constitutes a valid and subsisting first lien, except to the extent the Treasurer has valid and subsisting liens for unpaid taxes or assessments due and owing, upon the following described premises commonly known as 4428 Trailane Drive, Hilliard, Ohio 43026 (hereinafter the "Subject Property"):

SITUATED IN THE STATE OF OHIO, COUNTY OF FRANKLIN, AND IN THE CITY OF HILLIARD:

BEING LOT NUMBER FIVE HUNDRED FIFTEEN (515), IN HOFFMAN FARMS SECTION 8, AS THE SAME IS NUMBERED AND DELINEATED UPON THE RECORDED PLAT THEREOF, OF RECORD IN PLAT BOOK 100, PAGE 54, RECORDER'S OFFICE, FRANKLIN COUNTY, OHIO.

PARCEL NO. 050-009614-00

PRIOR DEED REFERENCE: 200512150394409.

The Court finds that the Mortgage was filed for record on December 15, 2003, Instrument No. 200312150394418, in the Recorder's Office in Franklin County, Ohio.

The Court finds that the conditions of the Mortgage have been broken and Wells Fargo is entitled to have the equity of redemption of the defendant titleholders foreclosed.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Wells Fargo and against Akim Rahman upon Count One of the Complaint in the amount of \$178,333.81, plus pre- and post-judgment interest thereon at the rate 5.25% per annum from and after July 1, 2010, plus advances for taxes and insurance totaling \$29,773.56 as of the trial date, plus costs for property inspections totaling \$380.00 as of the trial date, plus court costs and such additional advances for taxes, insurance and other charges, as allowed by law or under the Note or Mortgage as they may continue to accrue.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that default judgment is entered against Jane Doe, name unknown, spouse of Akim Rahman, JP Morgan Chase Bank, N.A., and Hoffman Farms Homeowners' Association, Inc., barring them from asserting any interest in the Subject Property.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that unless the sums hereinbefore found to be due to Wells Fargo, and the costs of this action, be fully paid within three (3) days from the date of the Entry of this decree, the equity of redemption of the defendant titleholders in the Subject Property shall be foreclosed and the Subject Property sold free and clear of the interests of all parties herein, and an order of sale shall issue to the Sheriff of this County, directing him to appraise, advertise and sell said Subject Property according to law and the orders of this Court and report his proceedings to this Court.

IT IS HEREBY FURTHER ORDERED that the Sheriff shall send counsel for the party requesting the Order of Sale a copy of the publication notice promptly upon its first publication.

IT IS HEREBY FURTHER ORDERED that the Sheriff, upon confirmation of said sale, shall pay from the proceeds of said sale, upon the claims herein found, the amounts thereof in the following order of priority:

1. To the Clerk of this Court, the costs of this action, including the fees of the appraisers.
2. To the Treasurer of Franklin County, the taxes and assessments due and payable as of the date of the Sheriff's Sale, and legally assessed against the real estate.
3. To Wells Fargo, the principal sum of \$178,333.81, together with interest thereon at the rate of 5.25% per annum from and after July 1, 2010, together with advances for taxes and insurance totaling \$29,773.56 as of the trial date, plus costs for property inspections totaling \$380.00 as of the trial date, plus court costs, together with such additional advances for taxes, insurance and other charges, as allowed by law or under the Note or Mortgage, as they may continue to accrue and shown as of the date of the confirmation of the sale.
4. The balance of the sale proceeds, if any, shall be paid by the Sheriff to the Clerk of this Court to await further orders of this Court.

IT IS FURTHER ORDERED, that upon the distribution of the proceeds of sale as aforesaid, the Clerk of this Court shall issue a certificate to the County Recorder directing the Recorder to enter the same on the margin of the records of said mortgages and liens, releasing said liens from the Subject Property.

No other claims remain pending in this case. This is a final and appealable order.

The Clerk of Court shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal and not the service in the appearance docket. Civ.R. 58(B).

SO ORDERED.

JUDGE TRAVIS

Submitted:

/s/ John B. Kopf III

Scott A. King (0037582)

John B. Kopf III (0075060)

Thompson Hine LLP

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Columbus, Ohio 43215

(614) 469-3200

(614) 469-3361 (fax)

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john.kopf@thompsonhine.com

Attorneys for Wells Fargo Bank, N.A.

Franklin County Court of Common Pleas

Date: 05-02-2013
Case Title: WELLS FARGO BANK NA -VS- AKIM M RAHMAN
Case Number: 11CV001095
Type: JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in cursive script, "Alan C. Travis", is written over a circular embossed seal. The seal features a central emblem surrounded by text, though the details are not clearly legible.

/s/ Visiting Judge Alan C. Travis

Appendix C

Appendixes

C.

In fact, the right of access to the courts finds support in several provisions of the Constitution including: the Due Process Clause of the Fourteenth Amendment, *Wolff v. McDonnell*, 418 U.S. 539, 579, 94 S.Ct. 2963, 2986, 41 L.Ed.2d 935 (1974), the Equal Protection Clause, *Pennsylvania v. Finley*, 481 U.S. 551, 557, 107 S.Ct. 1990, 1994, 95 L.Ed.2d 539 (1987), the First Amendment, *Turner v. Safley*, 482 U.S. 78, 84, 107 S.Ct. 2254, 2259, 96 L.Ed.2d 64 (1987) (citing *Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed.2d 718 (1969)), and the Privileges and Immunities Clause of Article IV, *see, e.g., Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143 (1907); *Smith v. Maschner*, 899 F.2d 940, 947 (10th Cir. 1990)

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

WELLS FARGO BANK, NA,

Plaintiff,

Case No. 11CVE01-1095 (Bender, J.)

v.

AKIM M. RAHMAN, et al.,

Defendants.

ORDER OF REFERENCE

Pursuant to Civil Rule 53 and Local Rule 99.02, this case is referred to Magistrate Lippe for the following:

X **Bench Trial. (Please disregard any previously scheduled trial dates)**

Further specifications or limitations regarding this Order of Reference:

This case is scheduled to be heard before Magistrate Lippe on March 11, 2013, at 10:00 a.m., 345 South High Street, 4th Floor, Courtroom 4D, Columbus, Ohio.

Each party will have a time limit of two hours to present their case. All counsel representing a party must file a written notice of appearance. No continuances will be granted in order to obtain new counsel or due to obtaining new counsel. **Counsel shall copy the assigned Magistrate with all future filings that affect the referred matter. Counsel shall confer with the assigned Magistrate regarding any scheduling changes.**

Copies to:

Counsel for Plaintiff: William L. Purtell; Amanda B. Romanello; Elizabeth A. Carullo; Elizabeth S. Fuller; John B. Kopf; Scott A. King

Counsel for Defendant Franklin County Treasurer: Adria L. Fields

Defendants: Akim M. Rahman; Unknown Spouse of Akim M. Rahman; JPMorgan Chase Bank, NA; Hoffman Farms Homeowners' Association, Inc.

Magistrate Lippe

Franklin County Court of Common Pleas

Date: 11-07-2012
Case Title: WELLS FARGO BANK NA -VS- AKIM M RAHMAN
Case Number: 11CV001095
Type: ORDER OF REFERENCE AND NOTICE OF HEARING

It Is So Ordered.

The image shows a handwritten signature in cursive that reads "J. Bender". To the right of the signature is a circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" at the top and "CLERK OF COURTS OF THE COMMON PLEAS" at the bottom. In the center of the seal is a smaller circular emblem with a sunburst design.

/s/ Judge John F. Bender