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Appellants-Defendants *pro se*

M&T BANK S/B/M TO HUDSON CITY SAVINGS BANK,
Plaintiff-Respondent

v.

H. SCOTT GURVEY; MRS. H. SCOTT GURVEY; fictitious spouse of H. SCOTT GURVEY; AMY R. GURVEY
Defendant-Appellants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION:
DOCKET NO.
A-003760-23 TEAM 04

CIVIL ACTION
ON APPEAL FROM

SUPERIOR COURT,
CHANCERY DIVISION,
ESSEX COUNTY
DOCKET NO.
SWF-014035-18

ORAL ARGUMENT REQUESTED

Sat Below:
Hon. Jodi Lee Alper, Pj.Ch.

Hon. Sheila Venable, A.J.S.C.

Defendant-Appellants' Amended Brief in Support of Their Appeal from Orders of the Superior Court of New Jersey, Assignment Judge and the Chancery Division, Essex County

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[1] The Chancery Division did not issue written opinions, issuing orders referring to statements made on the record. Those transcripts are submitted here. Relevant Law Division transcripts are included as exhibits per instructions from the clerks of the Appellate Division.

[2] "Da" for Defendant-Appellant Appendix.

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PRELIMINARY STATEMENT

Defendant-Appellants, ("the Gurveys"), retired senior citizens, appeal to this court an order from the Chancery Court of Essex County, Judge Jodi Lee Alper, (Da29) which is so outrageous as to raise, especially in the context of INCONSISTENT prior rulings in this nearly eight-year-old case, questions about motives of the judge who issued them.

PROCEDURAL HISTORY

On June 14, 2017, Appellants-Defendants file a lawsuit against M&T Bank ("M&T") in the Law Division, *Gurvey, Pro Se, v. M&T New York Bank Corporation, Inc.*, Docket No. ESX-L-04337-17.

On July 5, 2018, M&T filed the foreclosure suit on appeal. (Docket, Da34).

On August 15, 2018, Appellant-Defendants removed the foreclosure to the United States District Court for the District of New Jersey ("DCNJ"). There they filed an answer and counter claim.

On March 29, 2019, the DCNJ remanded the case back to the Superior Court following an out-of-time motion by M&T. (Da35)

On October 16, Appellant-Defendants filed another copy of their answer and counter claims with the Clerk of the Superior Court and paid the required state filing fee. (Da35)

Nonetheless Judge Alper held that "no answer had been filed" and this Appellate Court granted an interlocutory appeal (AM-000023-21, A-000749-21T4). Judge Alper denied a motion for a stay pending that appeal, as did this Appellate Court. With the interlocutory appeal pending Judge Alper entered a final judgment and ordered a sheriff's sale. (Da37)

Appellant-Defendants sold their home on July 6, 2022. M&T was paid the amount specified in Judge Alper's final order over Appellant-Defendant's objections. The foreclosure was marked settled/dismissed on March 7, 2023. (Da39)

Appellant-Defendants filed a motion to vacate based on new law on March 27, 2023. (Da39) Chancery denied that motion on May 1, 2023, and granted a motion by M&T declaring Appellant-Defendants to be vexatious litigants and awarding costs and fees which Appellant-Defendants were not allowed to challenge. (Da39)

Judge Venable entered an order confirming Judge Alper's order and issuing a broad preclusion order against Appellant-Defendants. (Da40)

STATEMENT OF FACTS

On July 5, 2018, M&T Bank ("M&T") by the law firm Schiller, Knapp, Lefkowitz & Hertzel, LLP ("SKLH") of Latham, New York, filed the foreclosure suit on appeal. (Docket, Da34).

The foreclosure filing included fraudulent certifications from officials of M&T Bank and its lawyers, denying the existence of any other litigation between the parties. (Da109).

The false certifications hid from the Chancery Division a lawsuit filed on June 14, 2017, by Appellants-Defendants against M&T in the Law Division, *Gurvey, Pro Se, v. M&T New York Bank Corporation, Inc.*, Docket No. ESX-L-04337-17.

Petitioner's Law Division complaint was filed by Order to Show Cause when M&T, which purported to be the holder in due course of the Gurvey's 2002 Hudson City Savings Bank (HCSB") mortgage, began threatening to foreclose claiming to be owed money for property taxes and insurance. Petitioners denied owing any money to M&T and asked the Law Division for temporary restraints to preserve the *status quo* pending adjudication. Appellants were then as now prepared to prove at trial that they did not owe M&T anything.

M&T moved for dismissal of the Gurvey's action and additionally argued by its attorney from Reed Smith LLP that restraints were not warranted because "M&T Bank has agreed to preserve the status quo, and no foreclosure action had been filed and would not be filed."

Law Division Judge Patrick Bartels denied the motion to dismiss and, based on M&T's representations, declined to impose restraints, setting the case on a one-year trial schedule.

M&T filed this foreclosure action despite its representations to the Law Division, having never revealed to the Chancery Court the existence of the Law Division case.

The eight-year history of the Chancery Court case is as arduous as it is long and will not be reiterated here. (See Docket, Da35. It included a round trip to the United States District Court for the District of New Jersey to which Appellants removed it on August 15, 2018. A filing of an answer and counter claim by Appellants was made in the District Court. A remand back to Chancery by the District Court filling a motion, filed out of time, by M&T.

Another filing of an answer and counter claim on the Chancery Court docket by Appellants and a payment of the proper fee for the counter claims. (See Docket, Da35 at October 16 and October 22, 2020, also note the mislabeling of the paper filing by court staff as a non-contested answer on October 19). Obviously, Appellants, denied direct access to eCourts and reliant on the clerk to enter papers correctly, were contesting the foreclosure. Another note, Appellants discovered some years later that the federal judge on the case, U.S. District Court Judge Susan D. Wigenton, owned stock in Hudson City, Appellants mortgage lender, then a wholly owned part of M&T. (Da96) You can't make this stuff up!

None the less Chancery Judge Jodi Alper, after receiving the case back, never allowed Appellants to defend themselves from the illegal foreclosure and failed to comply with numerous requirements of federal mortgage law. Judge Alper also refused to grant a stay once this Appellate Division had granted an interlocutory appeal (December 6, 2021, Da98) and demanded a sheriff's sale.

Following a new relevant opinion creating new law, Appellants filed a motion to reconsider/vacate. Judge Alper denied that motion and granted to M&T a totally frivolous motion to cite Appellants as vexatious litigants. (Da26) Assignment Judge Sheila Venable issued an expansive preclusion order, (Da4) exceeding her authority. This Appellate Division has granted this appeal of those rulings. (Da1)

NEW CONTROLLING LAW

In 2024, Gurvey Defendant-Appellants filed a motion on notice for reconsideration asking Judge Alper to review and take notice of two recent controlling and pre-emptive federal RESPA decisions, the first decided by United States Supreme Court overturning the Second Circuit Court of Appeals. *Cantero v. Bank of America, N.A.* 602 U.S. 205 (May 30, 2024). (Da95) The second was decided by the District of New Jersey, *Brouillette v.*

Citimortgage, 2024 WL 2796529 the day after *Cantero* was decided. (DNJ May 31, 2024)

Judge Alper denied the motion, giving no reason and never indicating during oral argument that she had read the opinions filed with the moving papers. (1T)

Cantero involved a dispute over whether New York's law requiring banks to pay interest on escrow accounts was preempted by federal banking law. The class action plaintiffs, including Alex Cantero, argued that Bank of America should have paid interest on their escrow accounts as required by New York law. The Supreme Court ultimately held that the Second Circuit failed to properly analyze whether the state law was preempted by the National Bank Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act. The court held that the issue of preemption is an essential inquiry that must be analyzed by the court on every material issue in mortgage and foreclosure litigation.

In the instant case, Chancery never upheld or analyzed the HCSB state mortgage contract. It never considered the preemptive operation of Regulation X of RESPA, the National Bank Act or the Dodd-Frank Reform and Consumer Protection Act, never analyzed the issue of mandatory federal preemption and the extended federal duties of M&T as loan servicer to Appellants up until the date of sale of the property and beyond. In violation of due

process of law, the chancery court refused for five years to allow Defendant-Appellants to argue that federal law did require such a review. Judge Alper continued to contumaciously ignore her duties under Regulation X of RESPA, 12 CFR §1024 and her and Judge Venable's 2024 orders are clearly at odds with *Cantero.* Appellants are justified in calling the new controlling law to the court's attention and the court should have given due consideration to the new law. Moreover, in this specific case, respondent M&T having closed the optional tax escrow account and fully performing a binding contract with the Gurveys in 2016, could not reopen a new escrow account without a valid modification, re-channel the Gurveys' monthly principal and interest payments into the concealed newly opened account and defy RESPA regulations by not accounting on monthly statements for money laundering crimes in the Gurveys' mortgage loan file.

In addition, the District Court of New Jersey's decision and order in *Brouillette v. Citimortgage Inc., Cenlar, and Powers Kirn, LLC, Brouillette v. CitiMortg.,* Civil Action 23-04304 (GC) (JBD) (D.N.J. May. 31, 2024) is *per se* controlling and requires vacatur of all of Judge Alper orders entered in 2022. The Court could not prematurely discharge M&T of its loan servicer duties on the date of entry of default judgment, December 7, 2021, and append M&T's contended fraudulent sua sponte payoff balance that never received hearing. Under

preempting federal law and Brouillette, M&T's federal duties to Appellants endure at minimum until the date the subject home is sold, and beyond to deal with defendant M&T and Reed Smith's continuing fraud and frivolous litigation post involuntary sale. To comply with all RESPA and other federal regulations the Court had an administrative duty to compel production of all indebtedness statements generated since 2016 when the Gurveys' malicious abuse of process began before entering default judgment in 2021 and certainly prior to scheduling any foreclosure or involuntary sale of the home on July 6, 2022. These mandates were ignored and contumaciously defied by Judge Alper in continued violation of Appellants' constitutional rights.

POINTS ON APPEAL

I. ASSIGNMENT JUDGE SHEILA VENABLE AND CHANCERY JUDGE JODI LEE ALPER ABUSED AUTHORITY, VIOLATED THE LAW OF THE CASE, AND DEPRIVED DEFENDANT-APPELLANTS OF THEIR CONSTITUTIONAL RIGHTS TO DUE PROCESS, EQUAL PROTECTION AND PREEMPTION UNDER THE SUPREMACY CLAUSE IN ISSUING ORDERS, (Da1, Da5) DENYING DEFENDANT-APPELLANTS THE RIGHT TO FILE A NEW COMPLAINT IN THE LAW DIVISION IN SPITE OF TWO SEPARATE ORDERS (Da40, Da42) ISSUED BY LAW DIVISION JUDGE RUSSELL J. PASSAMANO IN 2023 IN THE GURVEYS' PARALLEL PRIORITY LAWSUIT, ON MOTION AND AFTER BOTH ORAL AND WRITTEN ARGUMENT, EXPLICITLY PERMITTING APPELLANTS TO FILE A NEW COMPLAINT TO CONFORM TO NEW LAW AND UPDATED FACTS FOLLOWING ABHORRENT ACTIONS (SEE II AND III BELOW) FORCING

PETITIONERS TO INVOLUNTARILY SELL THEIR HOME OF TWENTY YEARS UNDER DURESS WHEN THEY WERE NEVER IN DEFAULT

(Sua sponte order at Da4 by assignment judge could not be raised below)

(Chancery order at Da26, Raised below: 1T)

The powers and duties of the assignment judge are detailed in Rule 1:33-4. Part (a) reads, "The Assignment Judge shall be the chief judicial officer within the vicinage and shall have plenary responsibility for the administration of all courts therein, subject to the direction of the Chief Justice and the rules of the Supreme Court".

There is nothing in that rule, in the Constitution of New Jersey or in statute that gives an assignment judge appellate power or power to extend their authority beyond the lower court vicinage.

Nonetheless, Assignment Judge Sheila Venable strayed far beyond her purely ministerial role in making permanent Judge Jodi Alper's intemperate rulings that only the Appellate Division can review on appeal. She ALSO defied law of the case based on Judge Alper's own rulings AND CONCESSIONS on May 10, 2022,(3T) that Judge Alper CANNOT GET involved in peripheral lawsuits in this case, which were properly filed by Appellants who never got a hearing on the merits or a trial on any of their priority claims filed against M&T and pending since 2017.

Judge Venable has abused discretion by entering a filing ban extending beyond the Chancery Division from which it came (Da4) to include the Law Division which had already upheld Petitioner's right to continue litigation against defendant M&T and its debt collectors in two orders entered in 2023. (Da40, Da42) Judge Venable demonstrated that her impartiality can seriously be questioned by entering a final judgment intended to cause collateral prejudice to Appellants when Appellants have unfinished business against M&T and its debt collectors in the federal district court. (Da4). It should be noted that prospective injunctive relief and declaratory determinations of continuing violations of Appellants' constitutional rights was sought against Judge Alper and the chief administrator of the NJ Courts, Hon. Glenn Grant and wrongful state action and FDCPA damage against M&T and its debt collector law firms and DCNJ Judge Wigenton, already required to recuse herself since 2018 could not dismiss this meritorious complaint *sua sponte*. *Pulliam v. Allen*, 466 US 522 (1984); *Ex Parte Young*, 209 US 123 (1908); *Kentucky v. Graham*, 473 US 159 (1985). Had Judge Wigenton recused herself in 2018, remand would have been denied, and Judge Alper would never have gotten back the illegal foreclosure complaint in 2019. Technically Appellants have the constitutional right to recover fees and costs against the named

respondents including Judge Alper, but did not seek that relief in the lawsuit. *Pulliam v. Allen, supra.*

Judge Venable's clear *sua sponte* usurpation of authority is nothing but ploy to overturn the law of the case established by Judge Russell J. Passamano in the Law Division, and to prejudice Appellants' constitutional right to pursue additional relief that Judge Alper claimed was outside her authority. Judge Passamano's orders are the result of carefully considered litigation facts and history, detailed in the preliminary statement above. Moreover, in 2022, Judge Alper expressly said on record she was giving the Bank what it wanted without hearings and Appellants could enter another court and recover damages and she would not get involved in peripheral litigation or stop further actions between the parties. (3T, pp. 36-37) That Appellants would continue litigation was of concern to debt collector Gerbino during hearing on May 10, 2022 (3T, pp. 36-37) and the court's response was that it would not stop Appellants' from pursuing additional claims. Gerbino would follow up on his fear of personal liability when he presented Petitioners with a virtually extortionary settlement agreement the night before their home was scheduled for a sheriff's sale. (Da136)

Law Division Judge Passamano twice considered M&T's attempts to prevent Appellants from restating their case with a new complaint designed to include provisions to comply with both

the new law represented by the now controlling *Cantero* and *Brouillette* precedents and with the new fact basis resulting from the erroneous actions taken by the Chancery Division (See III below). He ruled in Appellants' favor both times, denying reconsideration to M&T in October 2023. (Da40, Da42, Da51, Da68)

So, M&T plays the same card it served up at the start of this case. What it can't get from the Law Division, it gets from Chancery where its debt collector attorneys engaged in fraud and deceit with their false certifications designed to hide the existence of the Law Division action at the start of the foreclosure process. (Da109) This is a disgrace. The Appellate Division should not have allowed it in 2018. It should not have allowed it in 2021-2022 while Judge Alper was continuing to defy the law and Appellants' constitutional rights. It should not allow it now.

To repeat for the umpteenth time, M&T filed its foreclosure action with a fraudulent certification (Da109) hiding the existence of the Law Division case, filed a year earlier in June 2017, asking the court to review the mortgage agreement and issue a ruling on M&T's false contention that it had been breached by Appellants. It had not. Instead, four contract provisions were breached by M&T separate and apart from binding contract entered with Appellants closing the optional tax escrow account in 2016.

A quick trial in the Law Division, fully empowered under NJ's Constitution to hear the complete case, would have proven Appellants' claims and ended this dispute. Appellants, who had never failed to pay their principal and interest under their mortgage or the property taxes due to Montclair, would still have their home.

Chancery, which Appellants have been told is not used to hearing a contested foreclosure complaint and usually hears cases where the homeowner admits to a default, refused Appellants their statutory and constitutional right to contest this one that was a fraud from Day 1. That the two Essex vicinage cases were allowed to continue and generateinconsistent orders was a grave injustice and is exactly what NJ's Entire controversy Doctrine, NJ Ct. R. 4:30A, was enacted to prevent. The Superior Court of New Jersey should be ashamed of the mess it allowed to fester for all these years and cause monumental damage and injuries to Appellants without any legal justification.

Now Chancery has again granted M&T what they could not win in the Law Division and issued an order barring Appellants from filing their new complaint in the Law Division. (Da4, Da26) With this imprudent order Judge Alper overrules her own previous order entered on May 10, 2022 (3T) and also dishonors Judge Passamano, a clear abuse of power. There is no authority giving

Judge Alper appellate power to overrule Judge Passamano. Rule 4:3-1.

The court took this abhorrent action knowing full well that Judge Passamano, presiding over the Gurveys' priority case filed in the Law Division in 2017 more than one year before M&T had efiled the illegal foreclosure complaint in Chancery had twice granted to them the right to refile their complaint over the objections of the Plaintiff-Respondent M&T. (Da40, Da42, Da51, Da68). Judge Passamano first granted that permission on August 2, 2023, after hearing an argument on July 7, 2023 (Da68, hearing transcript at Da42) and to vacate all previous orders in that lawsuit. M&T and DNJ defendant debt collectors Reed Smith and Aaron Bender went to the well again with a motion to reconsider, a clearly frivolous order but Appellants opposed it on the merits and did not challenge M&T's abuse of process. Judge Passamano reaffirmed his original decision on October 5, 2023. (Order at Da40, Reasons on record Da51). These opinions and orders establish the law of the case and that the Gurveys have serious unfinished business in the court.

But in the Chancery court, in defiance of the established law of the case, Judge Alper took it upon herself to grant Plaintiff-Respondent M&T the relief they had twice sought and were twice denied in the Law Division and that she herself admitted she had no power to interfere with.

This is an egregious abuse of authority by Judge Alper. Chancery has no power to overturn the decision of the Law Division. This is especially true because it was Judge Alper who having conceded she had no power to get involved with peripheral lawsuits also instructed the Gurveys on or about July 3, 2022, to get their damages and other relief in another court. Nor does Judge Alper have the power to deny Defendant-Appellants their constitutional right of appeal. This shocking abuse of power violates the Constitution of the State of New Jersey, the rules of the Superior Court, and the Defendant-Appellants' right to due process and equal protection.

After promulgating its unconstitutional decision, Chancery asked Plaintiff-Respondent M&T to produce a list of Appellant's litigation history. Appellants were told in violation of their constitutional rights they were not being allowed to challenge this list, which is loaded with inaccuracies, *sua sponte* disputed orders in other courts entered without motions on notice, and misrepresentations and consists mostly of irrelevant citations which have nothing to do with this court or the specific motion at bar. As a matter of law, neither Judge Alper nor Judge Venable could *sua sponte* take judicial notice of disputed orders[3] but continued to do so.

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[3] Judicial notice is reserved for information "not subject to

Judge Alper also asked Respondent M&T and the DNJ defendant law firm debt collectors to produce the indebtedness/payoff statements and to tally costs and fees. The indebtedness statements were never produced in 2021 and Appellants continued not to be allowed to challenge the tally. Unconstitutional default judgment with a fraudulent single tally was appended *sua sponte* to the court's order without mandatory hearings convened under the controlling Real Estate Settlement Procedures Act ("RESPA") 12 CFR Part 1024. It is the federal duty of a loan servicer to comply with all accounting duties through the date

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reasonable dispute." Fed. R. Evid. 201(b); *Big Easy Studios, LLC v. United States*, 147 Fed. Cl. 539 (2020) For example, judicial notice is properly taken of definitions in dictionaries and encyclopedias and addresses of government buildings. *See Osage Tribe of Indians of Ok. v. United States,* 95 F3d. Cl. 469, 473 (2010) (taking judicial notice of various definitions in dictionaries and encyclopedias); and *Myers Investigative and Sec. Servs, Inc. v. United States*, 47 Fed. Cl. 288, 297 (2000) (taking judicial notice of "[i]nformation concerning all the addresses of [various] federal buildings located in Ohio").

Conversely, judicial notice is not properly taken of findings of *fact and law in related court proceedings in another court*; news articles and press releases; and the authenticity of various documents and statements contained in other documents. *See, Pryde v. United States,* 2017 WL 6397228 at *13 (declining to take judicial notice of "findings of fact and conclusion of law" in related court proceedings in another court); *Confidential Informant 59-05071*, 134 Fed. Cl. at 711-12 (declining to take judicial notice of "news articles, press releases and court filings") and *Mirakami v. United States*, 46 Fed. C. 731-39 92000) (declining to take judicial notice of the "authenticity of the documents and statements made therein").

In addition, judicial notice cannot be taken of documents appended to a party's moving papers seeking application of res judicata or collateral estoppel when the court has an administrative duty to deny the motion on its face on other grounds because (i) the claim was never previously litigated before any court; and (ii) the opposing party against whom preclusion is sought had no full and fair opportunity to litigate the claim in a previous lawsuit.

of sale and beyond. *Brouillette v. CitiMortgage*, US District Court, New Jersey, No. 3:2023cv04304. The court ordered Appellants to pay the fabricated sum on July 3, 2022, entered on December 7, 2021 with no due process ever permitted to challenge the sum.

The Assignment Judge for Essex Vicinage, Sheila Venable, rubber-stamped Judge Alper's order on July 9, 2024, and improperly took judicial notice of challenged orders and making permanent the filing ban and payment order *sua sponte*. (Da4)(fn 4) No orders that adversely implicate constitutional rights can be entered *sua sponte* without motions on notice particularly not against pro se litigants. *Link v. Wabash R. R. Co.* 370 US 626 (1962) The assignment judge has managerial responsibilities only. She does not have appellate power and cannot overrule the judicial orders entered by Judge Passamano and the Law Division. Judge Venable did not even serve a copy of her opinion order on the Gurveys, after improperly taking judicial notice of disputed orders lists including dockets in the chancery court that had been unilaterally altered since 2022 with the unilateral addition of some 15 entries that now also falsely state that the Gurveys were represented by an attorney. (Docket, Da33) Contrary to fraudulent docket entries, the Gurveys never had an attorney representing them in the chancery proceeding. No attorney ever

filed a notice of appearance. They finally received a copy of Judge Venable's order from the M&T lawyer. (See Da4)

Defendant-Appellants can only speculate as to Chancery's gross abuse of its authority. In May 2022 the Gurveys were notified by Judge Alper's law clerk Leonardo DiStassio (Da149) that Judge Alper was engaging in *ex parte* communications with the Gurveys' adversary Thomas Sullivan since May 2022 after Sullivan who had made a collusive deal with M&T counsel-debt collector Danield Schleifstein of Parker Ibraham and Berg to steal the Gurveys' home but including the judge to order another illegal foreclosure sale after the first sale was stayed and then vacated. Sullivan's emails Judge Alper demonstrate clear breaches of the judicial code of ethics and defy ABA Rule 2.9 on Ex parte Communications requiring recusal of Judge Alper no later than May 2022 and vacatur of her orders.

But Judge Alper was acutely aware of Appellants' displeasure with the treatment they had received in her court. She had been served with Appellants' two previous briefs to the Appellate Division. She was aware that Appellants had made a motion for her recusal. These attempts at getting appellate review, intervention from the DCNJ judge in 2021, and the chancery case heard by another judge were improperly dismissed as moot, not, as M&T would have you believe, after findings on the merits. To date, the Gurveys have received no hearings or

trial on the merits of their priority complaint, answer, defenses and counterclaims to M&T's illegal foreclosure process since they entered the Law Division in 2017.

The fraudulent efiled foreclosure complaint was processed *sua sponte* through Chancery without allowing the Gurveys to contest the foreclosure, which was illegal. Judge Alper did not transfer or otherwise consolidate the files from the Law Division that would have put the Gurveys' answer, defenses and counterclaims on her docket in 2018. Nor did Judge Alper stay the illegal foreclosure while the case in the Law Division, filed the year before, resolved these issues. These remedies would have prevented the irreversible loss of the Gurveys' home prior to adjudication of the issues.

Of paramount importance is that as a matter of law, the duties of M&T as loan servicer did not cease on the date as Judge Alper unlawfully found when entering a premature default judgment on December 7, 2021. That Judge Alper entered orders to prematurely discharge the continuing federal duties of M&T as loan servicer to the Gurveys required reconsideration as a matter of law when the *Brouillette* case was decided on May 31, 2024.

While the *Brouillette* case was pending, all other issues were detailed at length in a prior filings seeking an interlocutory appeal with this Appellate Division, which the

Appellate Division granted on November 12, 2021. (AM-000023-21) Chancery refused to stay the foreclosure proceedings pending appellate ruling. (Da94) That forced appellants to sell their property involuntarily under duress. An appeal from the final order (A-000749-21T4) was dismissed by the Appellate Division as moot. That order must be reconsidered in light of the *Cantero* and *Brouillette* decisions.

We ask this court to strike both orders entered by Judge Alper and Venable allowing Petitioners to perfect their new complaint for filing in the Law Division and recover all damages and other relief to which they are entitled.

II. CHANCERY ERRED IN DENYING PETITIONERS A MOTION TO RECONSIDER DUE TO A MATERIAL CHANGE IN LAW THAT WOULD HAVE CHANGED THE COURT'S EARLIER DETERMINATIONS. CHANCERY ERRED IN FINDING PETITIONERS TO BE "FRIVILOUS LITIGANTS" WHEN THE STATUTORY CONDITIONS FOR SUCH A FINDING DO NOT EXIST AND PETITIONERS DO NOT MEET THE DEFINITION BUT M&T AND ITS DEBT COLLECTORS DO. TWO VICINAGE JUDGES EXCEEDED STATUTORY AND CONSTITUTIONAL AUTHORITY IN BARRING APPELLANTS FROM FILING ADDITIONAL MOTIONS IN ANY COURT (INCLUDING THE APPELLATE DIVISION) AND AWARDED COSTS AND FEES TO RESPONDENT M&T INSTEAD OF AWARDING SANCTIONS TO APPELLANTS.

(Raised Below: 1T, 2T)

In their continuing consumer mortgage fraud, fraudulent foreclosure, Fair Debt Collection Practices Act[4] and RESPA

[4] 15 USC §1692e

Regulation X[5], RICO conspiracy[6], attorney-debt collector fraud and deceit and punitive damages litigations against a national bank, foreign defendant M&T Bank of Buffalo, the Chancery Division erred in denying Defendant-Appellants reconsideration due to controlling change in RESPA application law, specifically, a controlling decision of the Unites States Supreme Court, *Cantero v. Bank of America, NA*, 602 US 205, 144 (Da99) and a decision of the US District Court for the District of New Jersey decided the next day. *Brouillette v. Citimortgage*, 2024 WL 2796529 (DCNJ May 31, 2024)

Defendant-Petitioners were improperly denied reconsideration and the federal preemption analysis required by *Cantero*. The court denied their motion without explanation. It then considered and granted a cross motion by M&T Bank, holding Plaintiff-Petitions to be frivolous litigants. The order to vacate appears on the docket at 5/1/2024 and references an oral argument held on 4/26/2024. There is no docket entry for that date and the transcription office could not locate a tape for such a hearing.

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[5] Regulation X of the Real Estate Settlement and Procedures Act, 12 CFR §§1024, 1024.39, 1024. 41, 12 USC §§2601 (RESPA)

[6] 18 USC §1962; *Slorp v. Lerner, Sampson and Rothfuss*, 587 Fed. Appx. 249 (6th Cir 2014)

It is clear on its face that the existence of a new, preemptive, federal court decision is an appropriate use of a motion to reconsider. It cannot be considered frivolous.

After committing this clear error, the Chancery court went on to consider a meritless motion from Respondents that Appellants be found to be frivolous. Judge Alper improperly took judicial notice of a long list of supposed other litigation events by Appellants, which was inaccurate, incomplete and irrelevant and which proved nothing AND HELD THAT APPELLANTS COULD NOT SEE THE LISTS. The court's consideration should be based on the motion at bar, and there is no question the motion asking the court to consider the new US Supreme Court and DNJ decisions was proper and justified. Nonetheless, Judge Alper granted respondent's motion. It barred Defendant-Appellants from filing any other motions on the subject matter of this case, in any court. (Da4, Da26)

As detailed in the preliminary statement above, this action was reversible error not only because the motion for reconsideration was on its face, but because the scope of the order Chancery proposed violated the law of the case, usurped the authority of the Appellate Division, and violated Defendant-Appellants' rights to due process. In one statement Judge Alper even sought to deny Appellants their right to file this appeal,

which is guaranteed under the rules of the court and the Constitution of the State.

THE GURVEYS CANNOT BE FRIVOLOUS LITGANTS AS A MATTER OF LAW. RESPONDENT M&T AND ITS DEBT COLLECTOR LAWYERS PARTICIPATED IN 8-YEAR OBSTRUCTION OF JUSTICE WITH STATE COURT OFFICERS WARRANTING DAMAGES FOR WRONGFUL STATE ACTION, MALICIOUS ABUSE OF PROCESS AND PUNITIVE DAMAGES IN FAVOR OF APPELLANTS

On May 30, 2024, the US Supreme Court entered its opinion in *Cantero v. Bank of America NA*, 602 US 205, 144 S. Ct. 1290 (May 30, 2024). The Appellate Division must comply with that order and to date has failed to do so. The Appellate Division must also vacate its previous order finding the Gurveys' appeal moot. The Gurveys' having been granted leave to appeal on November 12, 2021, could never receive an order from the Appellate Division implying that defendant M&T's preemptive federal duties as debt collector ended with entry of an illegal default judgment entered by Judge Alper when no mandatory hearings were convened after entry of default and before entry of default judgment. *US Bank National Association v. Guillaume*, 38 A 3d 570 (NJ 2012)

Cantero's change in law pertains directly to escrow accounts as argued by the Gurveys since 2017, and in particular escrow accounts provided for in mortgage loan contracts. The relevant parts of the US Supreme Court's order uphold a bank's legal right to contract for whatever provisions it deems fit to govern the lender's mortgage payments that are deposited into

escrow accounts. Here Judge Alper never honored any of the mortgage terms in Appellant's HCSB contract including the express provision that foreclosure is not a remedy available to M&T for breach of any term related to the optional escrow account.

Under RESPA, national banks that operate escrow accounts must provide borrowers with notifications and detailed and accurate account statements. §§ 2609(b), (c). These mandates were contumaciously defied by defendant M&T since 2016 and never ordered complied with by Judge Alper once the Gurveys' case scheduled for trial in the Law Division was somehow stayed and the Gurveys never got their day in court.

While Defendant M&T can attempt to defy RESPA regulations in its own mortgage contracts with its own borrowers, it had no legal right to play this game with the Gurveys HCSB contract.

In this unique case, the Gurveys' 2002 Hudson City Savings Bank mortgage contract provided for an optional escrow account. The contract also expressly provided that no default under the HCSB mortgage loan could result from a dispute over property taxes. The contract further provided under Para. 6B that the term "default" is expressly limited to the failure of the borrower to pay the monthly sum of principal and interest and no other sum. Defendant M&T was given all documents related to the Gurveys' claims that they were doubly billed for property taxes

by Montclair township and in 2020 the court agreed. Defendant M&T then prematurely abandoned its duties under RESPA, Regulation X, as loan servicer and began generating fraudulent accounting in the Gurvey's mortgage file with fees, fines, penalties and costs the Gurvey could not owe.

Contrary to Judge Alper's orders, the preemptive federal duties of defendant M&T as loan servicer did not cease at the time the illegal default judgment was entered on December 7, 2021. M&T's loan servicer's duties endured through at least July 6, 2022, the date of the involuntary sale. No indebtedness/payoff statements were ever produced for hearings.

JUDGE ALPER ABUSED HER AUTHORITY BY NOT CONVENING HEARINGS ON THE ALLEGED INDEBTEDNESS STATEMENTS PRIOR TO ENTRY OF DEFAULT JUDGMENT in 2021 AND WHEN RECONSIDERATION WAS DENIED. THE APPELLATE DIVISION HAD A DUTY TO GRANT APPELLANTS AN EMERGENCY APPEAL AS OF RIGHT TO ABORT CONTINUING VIOLATIONS OF THEIR CONSTITUTIONAL RIGHTS TO SAVE THEIR HOME

Under RESPA, a "servicer" is "the person responsible for servicing of a loan." 12 USC § 2605(i)(2). 'Servicing' is defined as 'receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan ... and making payments of principal and interest and such other payments ... as may be required pursuant to the terms of the loan.' " 12 U.S.C. § 2605(i)(3)). *Garmon v. Community Loan Servicing, LLC*, Civ. No. 22-5974, 2024 WL 489566, at *8 (D.N.J. Feb. 8, 2024) Courts have found that the plain language of several provisions

in Regulation X "broaden[s] the scope of a servicer's obligations" beyond the moment a foreclosure judgment is entered. However, a default judgment cannot be entered in NJ after entry of default without mandatory hearings that in abuse of discretion were never allowed by Juge Alper. *US Bank National Association v. Guillaume*, 38 A 3d 570 (NJ 2012) Thus, the Regulation's plain language imposes continued obligations on servicers beyond a foreclosure judgment, "at least until the judicial sale is completed". *Mannarino v. Ocwen Loan Servicing*, 2018 WL 1526558 (DNJ)

The court in *Mannarino* also noted that Regulation X "broadly defines 'servicer,' and the defendant servicer in *Mannarino* continued to behave like a servicer even after judgment. Defendant M&T had three loan servicers and debt collectors in addition to itself continued malicious harassment of the Gurveys including Reed Smith, Parker Ibrahim and Berg, and Schiller Knapp Lefkowitz & Hertzel. Each of these loan servicers was inducing reliance by the Gurveys by promising to produce the indebtedness statements for hearing after the date of the foreclosure judgment then in appeal and recognizing the Gurveys' right to appeal the foreclosure judgment and enter other courts to recover damages against them. See also, *Woodward v. Bullock*, 27 NJ Eq. 507 (Ch. 1875); (false statements made by a court officer, selling officer and mortgagee warrant vacatur

of sale); *Mutual Live Ins. Co. of NY v. Sturges*, 33 NJ Eq. 328, 331 (E. & A. 1880) *Mutual Life Ins. Co. of NY v. Goddard*, 33 NJ Eq. 482 (Ch. 1881)(person prevented from attending the sale by the statement of the plaintiff's attorney that the sale would be adjourned). A plenary action may be brought to void a foreclosure sale brought about by fraud. See *Turner v. Kuehnle*, 70 NY Eq. 61, 62 A. 327 (Ch. 1905); *Federal Home Loan Mortgage Corp ("Freddie Mac") v. Cole* 2019 WL 1501574 (Nj Super. Ct. App. Div. 2019)

III. **CHANCERY ERRED IN FINDING THAT THE FORECLOSURE WAS UNCONTESTED WHEN AN ANSWER AND COUNTERCLAIM HAD BEEN FILED, DOCKETED BY CHANCERY AND JUDGE ALPER ADMITTED ON THE RECORD IN 2021 THAT SHE RECEIVED THE COMPLETE RECORD FROM THE DNJ ON APRIL 24, 2019. JUDGE ALPER DENIED APPELLANTS DUE PROCESS BY REFUSING TO HEAR THEIR OPPOSITION TO THE FRAUDULENT COMPLAINT IN FORECLOSURE.**

(Raised Below: 8T Page 13 Line 7; 8T Page 13 Lines 9, 10; 8T Page 25 Line 13)

The Gurveys filed a Motion Seeking Vacatur of Entry of Default Judgment in Chancery under R. 4:43-3. At this point the court's docketing error had been fixed, there was absolutely no doubt now that their Answer and Counterclaim were on the docket, (Docket entry 10/19/2020) they were attached to the motion, properly noted as an answer, and the proper fee had been paid and cashed.

Under R. 4:43-3, a court may vacate the entry of default upon a mere showing of "good cause," which, under the rule means "the presence of a meritorious defense ... and the absence of any contumacious conduct." *O'Connor v. Altus*, 67 N. J. 106, 129 (1975). Considering whether good cause to vacate default exists "requires the exercise of sound discretion by the court in light of the facts and circumstances of the particular case." *Ibid.*

After the Appellate Division granted leave to appeal Chancery's denial of a motion to vacate entry of default, (Da116), Chancery entered default judgment tacking on a sua sponte fraudulent payoff balance without motion on notice or an opportunity to be heard. The Court in November 2021 entered a minute order that no oral argument would be allowed. Orders that adversely implicate the constitutional rights of litigants, especially *pro se* litigants, can never be entered without hearing. *Link v. Wabash R. R. Co.*, 370 US 262 (1962); *Erickson v. Pardus*, 551 US 89 (2007).

The result is that the Gurveys were denied all due process and an opportunity to defend themselves against an illegal foreclosure in which the mortgage holder had been receiving all required payments of principal and interest, had decided on its own to reject those payments, and then declared default, explaining its order on the verbal record reading from an

opinion clearly written prior to the hearing. (8T, page 24 lines 13 through 27)

This ruling stands contract law on its head. The denial of the motion to vacate default is a gross abuse of discretion.

In addition to denying the motion, the Chancery Division engaged in questionable and inconsistent conduct. In announcing its entry of default, the court explained why it was discounting the testimony concerning the failure of the clerk's office to mark the answer and counterclaim as such:

> *I don't have that before me today and I only have the docket to go on and the papers that have been filed by you and by Mr. Gerbino. I am going to rule. If you have a problem with it, you can make the appropriate motion.*
>
> …..
>
> *Based on this record before me and the papers that have been filed by both sides, I find that there was not an answer filed.* (8T Page 27 Lines 14 and 15)

Defendant-Appellants' Motion for an Order vacating entry of default pursuant to R. 4:43-3 returnable July 23, 2021, was filed via the JEDS system.

M&T did not file an opposition.

But on July 30, 2021, after the return date, M&T used its access to eCourts to docket a letter "request for adjournment/scheduling document…." (Docket entry 7-30-21). The letter is headed "*via eCourts.*" Without further hearing or

explanation, the Chancery Division granted M&T's request. The case should have been dismissed for want of prosecution.

The Chancery court clearly applies its rules differently depending on the party that makes the motion. They are entitled to law of the case orders related to the Law Division litigation, not orders denying the existence of that litigation. They received none of this consideration from the Chancery Court. (8T Page 27 Lines 14 and 15)

In addition, the Chancery Division denied without explanation the Gurveys' motion that the Chancery Division case be dismissed with prejudice for defiance of law, bad faith, and fraud or at the very least, returned to the Law Division to be consolidated with the Law Division case.

Haines v. Kerner, 404 U.S. 519 (1972), established that courts must liberally construe the complaints of self-represented litigants and provide clear explanations when denying their motions.

While Chancery also denied the motion to vacate without conceding that eCourts or JEDS errors caused the bundling of the Gurveys' answer and counterclaim on the docket and failed to explain why the Gurveys' could not have failed in their efforts to cure any defects in their filing of an answer and counterclaim, the court did make some questionable statements on

the record. One stated that *("M&T") followed the proper procedure.* (7T Page 22 Line 18)

Apparently in the court's judgment, M&T's filing papers with false certifications and hiding from the court the existence of the precedent litigation pending in the Law Division, as well as M&T's ongoing failure to comply with discovery and file motions within the time allotted by the rules, amount to "proper" litigation practices.

There is apparent frustration, inappropriate as it may be, on the part of the Chancery Division with its false iteration of litigation history and facts including its understanding as to the length of the proceedings between the parties

> *"I will note that this foreclosure was filed in 2018, so here we are in 2021 arguing as to whether or not the Gurveys have raised a meritorious defense. I don't find that they have raised a meritorious defense. I'm not going to repeat my reasoning that I gave for entering the June 17th, 2021, order permitting default to be entered."* (7T Page 22 Lines 11 through 7).

Ergo the court had completely misstated the litigation history that the litigation between the parties was filed in June 2017 by the Gurveys with their claims and defenses to foreclosure pleaded in the same court.

There was also the statement by the Court that Defendant-Appellants have "filed in the Law Division, I don't know…." (7T

Page 22 Lines 16, 17) This reference is even more obnoxious, but it seems to cover a wide range of sins. It may mean that now that the Chancery Division has entered a Final Default Judgment in total defiance of due process of law and engaged in a "rush to judgment" the Court suggests that Defendant-Appellants can continue with their lawsuit in the Law Division and try to recover the monetary damages they claim.

This absurdly ignores the fact that the Gurveys may eventually win in the Law Division and recover a significant sum of money but will have already lost their home and their health. There is no adequate remedy for the loss of a home. *Dis*missing the illegal foreclosure complaint and transferring M&T's frivolous fees, fines, penalties, etc. claims back to the Law Division would have rendered the foreclosure action moot.

And of course now, with the ruling naming Appellants "frivolous litigants" and ordering a ban on new filings in all courts, Judge Alper puts lie to her own words about seeking redress in the Law Division. (Da29)

On the record, the Chancery Court atrociously said it's not a problem if defendants lose their home because they can be awarded damages. This is a misstatement of the law. There is no adequate remedy at law for loss of a home and damages are inadequate as a matter of law. *Conklin v. Anthou*, 458 Fed. Appx. 94 (3d Cir 2012). That the judge could make such a statement

demonstrates a clear abuse of discretion and that defendants are being denied an unbiased tribunal.

In BV 001 Reo Blocker v. 53 West Somerset Street Properties, 467 NJ Super. 117 (2021), the Appellate Division of Superior Court recently found grounds to vacate a default judgment under far less compelling than the facts presented here. The holding of the Appellate Division is right on target:

> "When a court considers a motion to vacate a default judgment, the absence of evidence establishing willful disregard of the court's process favors relief under the rule allowing for relief from a final judgment in exceptional circumstances." N.J. Ct. R. 4:50- 1(f).

To quote the BV 001 v. 53 West Somerset Street Appellate Division Court, pp. 240 et seq:

> "Ultimately, "equitable principles" "should ... guide[ ]" a court's decision to vacate a default judgment. *Housing Auth. of Morristown v. Little*, 135 N.J. 274, 283, 639 A.2d 286 (1994); see also, *Pro. Stone, Stucco & Siding Applicators, Inc. v. Carter*, 409 N.J. Super. 64, 68, 975 A.2d 1039 (App. Div. 2009) (stating that "Rule 4:50 is instinct with equitable considerations"). Therefore, a Rule 4:50-1 decision rests within "the sound discretion of the trial court," and we will not disturb it "absent an abuse of discretion." *Mancini* . EDS, 132 N.J. 330, at 334 (1993)…

"A trial court mistakenly exercises its discretion when it "fail[s] to give appropriate deference to the principles" governing the motion, see *Davis v. DND/Fidoreo, Inc.*, 317 N.J. Super. 92, 100-01, 721 A.2d 312 (App. Div. 1998). reversing denial of motion to vacate); relies "upon a consideration of

irrelevant or inappropriate factors," *Flagg v. Essex Cnty. Prosecutor*, 171 N.J. 561, 571, 796 A.2d 182 (2002)(defining abuse of discretion); or rests its decision "on an impermissible basis," *U.S. Bank N.A. v. Guillaume*, 209 N.J. 449, 467, 38 A.3d 570 (2012) (discussing standard of review of order under Rule 4:50-1).

As in *BV 001*, this Appellate court must find that Chancery improperly denied Gurvey defendants their constitutional right of access to the Essex County courts by ignoring the law of the case orders of the Law Division and then pretending Defendants' priority claims, defenses germane to foreclosure and orders of the Law Division, did not exist. The trial court cannot discount the equitable principles that favor granting defendants' motion, mis-iterate the litigation history, and find that Gurvey defendants lacked a defense to foreclosure. Here, the Gurveys were stating claims defenses in the same court since 2017. Plus, the Gurveys claim that the unsupported and fraudulent statements submitted by M&T along with its fraud committed had to be heard by one of the two courts; and eCourts could not accept the loan serving fraud claims because they were outside the court's jurisdiction prior to entry of default judgment.

While subsection (a) ("excusable neglect"), also requires a showing of a "meritorious defense." See *Guillaume*, 209 N.J. at

469, 38 A.3d 570, here if there is excusable neglect it is the fault of eCourts bundling the Gurvey's remanded papers in the removal proceeding as a single opposition, instead of two entries as answer and counterclaims.

Regardless, Gurveys have shown meritorious defenses in papers before the Essex County court since 2017. See *Baumann v. Marinaro*, 95 N.J. 380, 395, 471 A.2d 395 (1984) (stating that relief is also available under subsection (f) " when the court is presented with a reason not included among any of the reasons subject to the one-year limitation"). Here defenses have been proffered since 2017, and it is the court's administrative failure to apply the prevailing law and acknowledge the existence of defendants' prior lawsuit that is the problem.

Thereafter, the Chancery Court was required to dismiss the foreclosure with prejudice based on the fraudulent filings. It failed to do so in breach of administrative duty. Then, once Chancery illegally assumed jurisdiction, it was required to vacate its order entering default as part of its purely administrative non-judicial functions, not continue adjudication and enter a default judgment *Wilcox v. Supreme Council of Royal Arcanum*, 210 NY 370 (1914) Contrary to the court's order, there is both an answer and counterclaim on the case docket, but mistakenly listed on eCourts as a "non-contested" entry. (Docket at 10/19/2020) Appellants have no control over the way their

filings are entered and characterized by eCourts clerks. Yet M&T's lawyers granted direct eCourts access have the right to enter the classifications while the Gurveys' do not. This is the third docketing mistake by eCourts. Appellants cannot be charged for M&T's fraud and for docketing errors.

The Appellate Division reviews the denial of a motion to vacate entry of default based on an abuse of discretion standard. See *US Bank National Ass'n v. Guillaume*, 209 NJ 449, 467 (2012) "[A]n abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" *State v. R. Y.*, 242 NJ 48, 65 (2020) (quoting *Flagg v. Essex County Prosecutor*, 171 NJ 561, 571 (2002) Pressler & Verniero, *Current N.J. Court Rules*, committee on Rule 4:43-3 (2020); see also *O'Connor, supra*, at 67 NJ 129 (finding "good cause" under Rule 4:43-3 includes "the presence of a meritorious defense"). Here, the Gurveys, Defendant-Appellants argue the court abused discretion on all three prongs.

In addition, the New Jersey Constitution, as noted by Law Division in its order entered April 16, 2021, says the Law Division and the Chancery Court are one court in which these cases may be consolidated, "so that all matters in controversy between the parties may be completely determined". *N.J. Const. art. VI, § III, ¶ 4x.* If the Chancery Court hears cases *in rem*,

that does not mean that M&T and SKLH's blatant fraud in filing on eCourts a separate foreclosure action with fraudulent affidavits, can escape treble damages liability under NJ's Consumer Fraud Act, NJSA 56L:8-1,20 and for attorney in-court fraud and deceit. The fraud is directly related to a coverup because M&T could not file a foreclosure action when the Gurveys' lawsuit with claims germane to foreclosure was already filed 14 months earlier.

Because M&T stopped taking the Gurveys' monthly principal and interest payments in 2017, programmed its computers to reject the Gurvey's payments and then rechanneled the Gurveys' payments into a closed optional escrow account that M&T closed in violation of a separate contract, the clear intent was to create a fraudulent pretext of default that never existed. This means that plaintiff M&T breached the contract, not the Gurveys, and has no remedy of foreclosure.

Only when a foreclosure action is deemed uncontested, the procedure is dictated by R. 4:64-1(d). This is not the case here; default has been entered in defiance of the HCSB contract and the prevailing law.

Chancery erred in its finding that Appellants had failed to contest the foreclosure, and all its subsequent rulings and orders should be stricken from the record.

JUDGES ALPER AND VENABLE ABUSED DISCRETION BY TAKING JUDICIAL NOTICE OF 1) EX PARTE PROFFERS ACCEPTED FROM THE GURVEYS' ADVERSARIES, 2) DISPUTED ORDERS IN OTHER COURTS, 3) *SUA SPONTE* ORDERS ENTERED WITHOUT MOTIONS ON NOTICE AND ENTRIES ON THE ALTERED ESSEX COUNTY DOCKET *Ward v. USPS*, 634 F. 3d 1274 (Fed Cir. 2011)

Judicial notice is reserved for information "not subject to reasonable dispute." Fed. R. Evid. 201(b); *Big Easy Studios, LLC v. United States*, 147 Fed. Cl. 539 (2020) For example, judicial notice is properly taken of definitions in dictionaries and encyclopedias and addresses of government buildings. *See Osage Tribe of Indians of Ok. v. United States,* 95 F3d. Cl. 469, 473 (2010) (taking judicial notice of various definitions in dictionaries and encyclopedias); and *Myers Investigative and Sec. Servs, Inc. v. United States*, 47 Fed. Cl. 288, 297 (2000) (taking judicial notice of "[i]nformation concerning all the addresses of [various] federal buildings located in Ohio"). Conversely, judicial notice is not properly taken of findings of *fact and law in related court proceedings in another court*, which is exactly what Judges Alper and Venable did to help defendant M&T's cause. *See, Pryde v. United States,* 2017 WL 6397228 at 13 (declining to take judicial notice of "findings of fact and conclusion of law" in related court proceedings in another court); *Confidential Informant 59-05071*, 134 Fed. Cl. at 711-12 (declining to take judicial notice of "news articles, press releases and court filings") and *Mirakami v. United*

States, 46 Fed. C. 731-39 92000) (declining to take judicial notice of the "authenticity of the documents and statements made therein"), In addition, judicial notice can never be taken when the court has an administrative duty to deny res judicata and collateral estoppel to the moving party because (i) the claim was never previously actually litigated before any court; and (ii) the opposing party against whom preclusion is sought had no full and fair opportunity to litigate the claim in a previous lawsuit.

JUDGE ALPER CONSISTENTLY VIOLATED PREEMPTING RESPA REGULATIONS THAT MANDATED DISMISSAL WITH PREJUDICE OF THE FORECLOSURE COMPLAINT IN 2018,AN AWARD OF CONSUMER FRAUD TREBLE DAMAGES IN FAVOR OF APPELLANTS FOR LOSS OF A CERTIFIED CASH BUYER'S SIGNED CONTRACT IN 2018 12 USC §2605(e); 12 CFR 1024 AND JUDGE ALPER HAD FULL POWER TO ADJUDICATE AND DISPENSE WITH ALL CLAIMS IN LAW AND EQUITY IN 2018 INCLUDING ORDER WITHDRAWAL OF THE FRAUDULENT CREDIT NOTICES PLACED BY M&T IN RESONSE TO APPELLANTS QUALIFYING WRITTEN REQUESTS.

Under RESPA, a "qualified written request," or QWR, "is a written request from the borrower (or an agent of the borrower) for information relating to the servicing of" a "federally related mortgage loan." 12 USC §2605 (e) (1)(A) When a servicer receives a QWR, the servicer must acknowledge receipt within five days and, within thirty days, either make corrections to the account or provide a written explanation declining to take any action. See § 2605(e)(2). None of the RESPA requirement were ever complied with by defendant M&T. Defendant made pretend they

did not exist.

Judge Alper is used to issuing foreclosure orders against homeowners who admit to default under their mortgage loan and are seeking relief under a loan modification agreement. However, Judge Alper has abused discretion in issuing these orders. But The Gurveys never defaulted under their loan, Judge Alper breached her administrative duties under preempting federal mandates and state law to the Gurveys since 2018 and has spent seven years trying to cover up her complicity in M&T Bank's malicious abuse of process and conspiracy to commit wrongful state action with other court officers in the sheriff's and clerk's officers of Essex County.

However, in this unique case, the fraudulent and illegal nature of defendant M&T's foreclosure complaint existed on the face of the complaint and Judge Alper had a duty under NJ's Constitution and Consumer Fraud Act to dismiss the illegal foreclosure complaint and award damages immediately to the Gurveys in 2018. Judge Alper failed to do so

The judges now cite to "purported" orders that were never part of the Essex County Vicinage record. More than 25 material and unilateral material docket entries were made to the Essex County dockets. Contrary to Mr. Bender's cross-motion and Judge Alper's orders, the cases did not begin with defendant M&T's fraudulent foreclosure complaint. The cases began with the

Gurveys' priority Law Division action filed June 17, 2017 seeking prior restraints under Regulation X of RESPA, 12 CFR 1024 et seq., damages for Regulation X violations and fraud, and defendant M&T Bank's breaches of four contracts. The preempting law of the United States is that after foreclosure default judgment was entered on December 7, 2021, defendant M&T being both a loan servicer and debt collector, had to continue to comply with Regulation X mandates.

Before an involuntary forced sale was ordered of the Gurveys' home on July 6, 2022, to buyers with whom Judge Alper was engaging in *ex parte* communications in violation of the Judicial Code of Ethics without service on the Gurveys. *ABA Rule 2.9 on Ex parte Communications*.

Judge Venable, new to the court, did not have sufficient history in the court to catch them the unilateral *ex parte* alterations to the docket including some 15 entries since the default judgment was entered that Petitioners were represented in the foreclosure action by an attorney John Lubenesky. Petitioner never retained John Lubenesky as a foreclosure attorney, and he never filed a notice of appearance on the chancery docket. These new changes to the docket demonstrate *ex-parte* obstruction of justice by members of the court.

To exemplify, on pp. 1, para. 1 (Da4) of her decision and order Judge Venable fabricates that Petitioners sought an order

to show cause on July 13, 2018. Such reference is nowhere supported by the record because on pp. 2 the Judge found contrary to this statement that defendant M&T's contended fraudulent and frivolous foreclosure complaint – already warranted damages in favor the Gurveys under NJ's Consumer Fraud Act, NJSA 56:8-1, 20- was filed on July 5, 2018. Also, the Gurveys' priority Law Division complaint filed on June 17, 2017 seeking prior restraints and damages under Regulation X of RESPA, 12 CFR §1024 and for breach of contract, was already on a standard litigation track with discovery served. The Gurvey's complaint mysteriously disappeared from the docket to the chagrin of the first Judge Patrick J. Bartels. Chief Judge Thomas Moore reinstated the case to the docket in 2017, a fact that Judge Venable had the capacity to investigate but did not. Instead, she cites other purported entries that never existed. There was no order to show cause filed by the Gurveys on July 13, 2018, on the Chancery docket because their immediate next filing was a removal action filed before the United States District Court for the District of New Jersey Newark in August 2018. This was an essential filing because the Gurveys' contracted cash buyers based in London immediately revoked the April 2018 contract of sale as when defendant M&T's fraudulent foreclosure complaint was discovered by the buyers on July 6, 2018. This caused the Gurveys' to forfeiture $920,000, treble

damages immediately recoverable under NJCFA that was the administrative duty of each of the Law Division and Chancery Division's jurisdiction to award the Gurveys. NJ Constitution, Art. VI, Section III, Para. 4. Instead, Judge Stecher[7], the new Law Division judged, stayed Petitioner's priority action, ordered that Judge Alper should consolidate the two actions and Judge Alper failed to do so. Then when the case was remanded by the District of NJ on April 1, 2019, Judge Alper admitted that she did not docket Petitioner's answer, defenses and counterclaims to the foreclosure complaint because they were mis-bundled as an "opposition" by her clerks.

Aside from the fact that the foreclosure action was fraudulent on its face with blatantly fraudulent statements averred to under oath, that "no other lawsuit existed between the parties", the foreclosure was a per se violation of Regulation X of RESPA, as now confirmed by the US Supreme Court in *Cantero v. Bank of America NA* issued May 30, 2024.

JUDGE ALPER MUST BE ORDERED TO RECUSE HERSELF RETROACTIVE TO 2022 AND VACATE ORDERS FOR ENTERTAINING *EX PARTE* COMMUNICATDIONS WITH ADVERSE ATTORNEYS AND FAILING TO SERVE THE GURVEYS WERE EX PARTE PROFFERS ACCEPTED AND CONSIDERED BY THE COURT

[7] After later ruling on a summary judgment motion, Judge Stecher also disappeared from the case. A clerk stated it was due to a conflict of interest but despite written request to Judge Stecher and to Chief Judge Moore, this information has not been confirmed or explained.

Judge Alper entered orders after her recusal was mandatory and sought by the Gurveys. Judge Alper and other Essex County sheriff's officers under Judge Alper's supervision and control then began entertaining *ex parte* proffers from the Gurveys' adversaries in May 2022 in violation of the Judicial Code of Ethics and ABA Rule 2.9 on Ex parte Communications. The Gurveys are *pro se* litigants. The judge was required to recuse herself in response to the Gurveys' motion after several improper ex parte incidents were confirmed and reported. The judge must suffer the fate of vacatur of orders.

On May 10, 2022, two *ex parte* sessions between defendant M&T's attorney debt collector Richard Gerbino of Schiller Knapp Lefkowitz and Hertzel, LLP (now believed to be in bankruptcy) and the court sheriff's officers took place that the Gurveys personally witnessed. Judge Alper was told and did not abort these communications. Instead, in abuse of discretion the Gurveys retaliated against in violation of the First Amendment and the Gurveys' home was sold on order of Judge Alper at a foreclosure sale. The home was sold on May 10, 2022, after an emergency stay had been granted by the Appellate Division that same morning. The stay was contumaciously defied by the judge and then the sale was subsequently vacated causing the Gurveys extreme emotional distress.

Thereafter, Judge Alper engaged in further violations of the Judicial Cannon of Ethics, ABA Rule 2.9 on Ex parte Communications. No judicial notice could be taken of information improperly obtained through *ex parte* communications with the Gurveys' adversaries or their venture partners without service of the documents on the Gurvey. Every litigant, especially a *pro se* litigant must be afforded service of all ex parte proffers accepted by a judge from an adverse party and given the opportunity to respond. *Safir v. US Lines*, 792 F. 2d 19 (2d Cir. 1986); *Rubins v. Plummer*, 813 P. 2d 778 (1990). *See also Goldfarb v. Solomine*, 460 NJ Super. 22 (2019) Nor can homeowner be mislabeled a frivolous or vexatious litigant when *ex parte* proffers or sua sponte orders entered without motions on notice are being considered or taken judicial notice of by the court without service on the pro se litigant. *ABA Rule 2.9 on Ex parte Communications*; *Ward v. USPS*, 634 F. 3d 1274 (Fed Cir. 2011); *Erickson v. Pardus*, 551 US 89 (2007).

In June 2022, the Gurveys were notified by Judge Alper's law clerk, Leonardo DiStassio, that Judge Alper had been entertaining communications from an outside attorney, Thomas Sullivan. (Da149) Sullivan had made a secret arrangement with defendant M&T Bank and its debt collector lawyer Dan Schleifstein of Parker Ibrahim and Berg that Schleifstein would get the judge to force another sale of the Gurveys' home for

purchase by his clients Erin and Jerard Magrini. The *ex parte* proffers were never ordered served on the Gurveys.

These undisputed facts demonstrate that by May 2022 the judge was required to recuse herself because impartiality could reasonably be questioned. Since 2021, the Judge had consistently been violating the Gurveys' constitutional rights. The record speaks for itself. On December 7, 2021, the Judge improperly entered a default judgment while still not ordered constitutionally mandated hearings on the lack of any legal right to foreclose and on the indebtedness/payoff statements generated in the Gurveys' Hudson City Savings Bank (HCSB) mortgage loan file 2016. The Judge then acted as if defendant M&T duties as loan services were over. **This statement defies the preempting federal law and Regulation X of RESPA, 12 CFR 1024.** A loan servicer's duties under RESPA continue until the sale of the property, not when default judgment is entered. *Brouillette v. Citimortgage*, 2024 WL 2796529 (DNJ 2024)

Then Judge Alper herself contradicted her own statements. The judge ordered defendant M&T to produce full accountings and indebtedness/payoffs statements in the Gurveys' file for hearing by May 15, 2022. These were the same documents that defendant M&T failed to produce in discovery in the Gurveys' 2017 Law Division lawsuit before discovery was closed. Judge Alper could not give defendant M&T another bite at the apple and had a duty

to dismiss the illegal foreclosure complaint efiled in 2018 with prejudice because there was no evidence to support that complaint. Suspiciously, in 2017 the Gurveys' priority Law Division lawsuit filed June 17, 2017, ESX-L-04337-17 seeking prior restraints under RESPA and damages had been confirmed as deleted from the docket as soon as the lawsuit was put on a standard litigation track and scheduled for trial. When the lawsuit was reinstated in 2017 by Administrative Judge Thomas Moore, the Gurveys were notified that Judge Patrick J. Bartels left the case and the trial date was not rescheduled. However, when the illegal foreclosure complaint was efiled on the chancery docket with fraudulent attestations under oath that "no other lawsuit existed between the parties" Judge Alper had a duty to transfer all the filed docket entries in the Law Division and not falsely contend that the Gurveys filed no answer, defense or counterclaims to foreclosure.

In 2022, the judge promised that the long-awaited and constitutionally mandated hearings would take place. They never took place. Instead, the Judge fraudulently induced the Gurveys' reliance by promising a full damage hearing on fraudulent alleged indebtedness statements in her court when she never had the intention of following through on that representation. Judge Alper was aware that defendant M&T had already been sanctioned four times by the Third Circuit for money laundering

crimes in the mortgage files on HCSB mortgage customers. The Gurveys had been HCSB mortgage customers since 2002. In fact, Judge Alper had a constitutional duty to grant full relief in equity and damages in law to the Gurveys under NJ's Constitution, Art. VI, Section III, Para. 4 since 2018 and defied that duty.

Instead, in 2022 the Judge contumaciously defied the Gurveys' constitutional rights under the Supremacy Clause, Art VI, Cl. 2 of the United States Constitution and instructed the Gurveys to go to another court to recover damages and get whatever other relief they were entitled to. *Haywood v. Drown*, 556 US 729 (2009)

CONCLUSION

The forced sale of a home is an error that cannot be undone. All that can be expected is that the Gurveys, having been given leave to refile by the Law Division, can return to the Law Division with a new complaint, rewritten to conform to the new facts they find thrust upon them, and with reference to the controlling law as recently clarified by the Supreme Court of the United States, to see a redress of their grievances.

Defendant-Appellants therefore respectfully ask this court to reverse the two orders of the Chancery and Assignment judges, allowing Defendant-Appellants to refile their complaint and have their day in court.

Dated and submitted:
February 10, 2025

Respectfully,

/s/ H. Scott Gurvey

/s/ Amy R. Weissbrod Gurvey

M&T BANK S/B/M TO HUDSON CITY SAVINGS BANK, Plaintiff-Respondent, v. H. SCOTT GURVEY; MRS. H. SCOTT GURVEY; FICTITIOUS SPOUSE OF H. SCOTT GURVEY; AMY R. GURVEY, Defendants-Appellants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-003760-23 Civil Action On Appeal From: Superior Court Of New Jersey Chancery Division Essex County Docket No. F-014035-18 Sat below: Hon. Jodi Lee Alper, P.J.Ch. Hon. Sheila Venable, A.J.S.C.

PLAINTIFF-RESPONDENT'S AMENDED BRIEF AND APPENDIX

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PRELIMINARY STATEMENT

Defendants-Appellants H. Scott Gurvey and Amy R. Gurvey (collectively, the "Gurveys") appeal is a frivolous attempt to overturn eight (8) proper orders that the trial court entered against them. This appeal is frivolous in every respect, even going so far as to challenge rulings that this Court already affirmed. The Gurveys' appeal should be rejected, and all of the rulings of the trial court should be affirmed.

The Gurveys were the subject of a proper foreclosure action that they lost. In order to avoid the consequences of their loan default, the Gurveys, who are known vexatious litigants, went on a litigation crusade in the state and federal trial and appellate courts. Not surprisingly, they lost at every turn. Ultimately, the Gurveys voluntarily sold their property and pocketed over half a million dollars in equity from the sale. Instead of letting their frivolous claims go, the Gurveys continue to file meritless applications, including this appeal. Far from showing why the trial court's orders were incorrect, this appeal shows exactly why the order declaring the Gurveys vexatious litigants in New Jersey must be affirmed.

This appeal fails for a multitude of reasons. *First*, the appeal is barred by the Law of the Case doctrine, *res judicata*, and collateral estoppel. Specifically, the Appellate Division has already dismissed an appeal by the

Gurveys, challenging the Foreclosure Action and claiming fraud by M&T Bank and its attorneys, as moot.

Second, the Gurveys are incapable of articulating any basis for which any court erred when granting M&T Bank's cross-motion to declare the Gurveys vexatious litigants. There is no dispute that the Gurveys' filings in the New Jersey state courts, coupled with their *dozens* of motions and applications to the federal courts, evidences their vexatious nature and disregard for court rules and procedures. The trial court's rulings were therefore proper and should not be disturbed.

Against this backdrop, it is clear the instant appeal should be dismissed as frivolous.

RELEVANT PROCEDURAL HISTORY AND BACKGROUND FACTS[1]

The factual and procedural history of this case, as well as the Gurveys' vexatious filings in various federal and state collateral attacks, have been set forth in great detail in the record and previous appeal. For the sake of brevity, M&T Bank will not repeat the entire tortured procedural history of all the Gurveys' filings related to the M&T Bank and the property. M&T Bank will

[1] Given the extensive factual and procedural history of this case, spanning nearly a decade and involving numerous filings and separate actions in various state and federal trial and appellate courts, it is both necessary and appropriate to present the procedural history and statement of facts in a consolidated manner for clarity and convenience.

only repeat the facts relevant to their opposition to the Gurveys' latest application and incorporates the record by reference.

The Gurveys Execute And Default On Their Mortgage

On or about April 29, 2002, the Gurveys executed a Fixed Rate Note ("Note") in favor of Hudson City Savings Bank ("HCSB") in the amount of $561,600.00. (Pa390). To secure the Note, on or about April 29, 2002, the Gurveys executed a Mortgage ("Mortgage") in favor of HCSB. (Pa392). The Mortgage was publicly recorded against property located at 315 Highland Avenue, Montclair, New Jersey 07043 (the "Property") by the Essex County Register on May 20, 2002. (*Id.*).

The Mortgage states that "Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument." (Pa392 - Pa393).

Effective November 1, 2015, HCSB merged into M&T Bank. (Pa051). Because of the merger, M&T Bank became the servicer of the Loan, and M&T Bank remained both the investor and servicer of the Loan. (*Id.*).

On December 7, 2016, M&T Bank notified the Gurveys as to delinquent taxes due on the Property. (Pa057). M&T Bank advised the Gurveys that their failure to remit payment "may result in the permanent establishment of an escrow account to pay these delinquent taxes ..." (*Id.*). In response, the

Gurveys erroneously claimed that their tax appeal prevented Montclair Township from collecting taxes "without the Court's approval" (Pa058) and claimed that Montclair Township provided them with a "fraudulent overassessment" on property taxes. (Pa059).

Due to the Gurveys' failure to satisfy the delinquent taxes, on January 31, 2017, M&T Bank advised that an escrow account had been established on the account. (Pa060).

Thereafter, on or about May 1, 2017, the Gurveys defaulted on the Mortgage by failing to make payments on the escrow account due to the delinquent real estate taxes. (Pa065).

As a result of the default, on July 6, 2017, M&T Bank served its notice to foreclose on the Gurveys. (Pa076).

M&T Bank's Foreclosure Action Against the Gurveys

A. Final Judgement Against the Gurveys; and the Gurveys' Voluntary Sale of the Property and Satisfaction of the Mortgage

On July 5, 2018, M&T Bank commenced this residential mortgage foreclosure action after the Gurveys defaulted on their mortgage loan ("Foreclosure Action") by filing a foreclosure complaint in the Superior Court of New Jersey, Essex County, Chancery Division. (Pa061). The Gurveys removed the Foreclosure Action to the United States District Court for the

District of New Jersey, where it was assigned Case No. 2:18-cv-12702 (SDW). (Pa007). M&T Bank filed a motion to remand the Foreclosure Action to the New Jersey Superior Court, which was granted on March 29, 2019. (Pa008).

The Gurveys then filed two separate appeals to the United States Court of Appeals for the Third Circuit associated with the remand of the Foreclosure Action, under Case Nos. 19-2006 and 19-2130. (Pa013, Pa018). The Gurveys obtained no relief on either appeal, and both appeals were terminated. (*Id.*). Upon remand, M&T Bank moved for entry of default due to the Gurveys' failure to file a contesting answer in the Chancery Division, which the Gurveys opposed. (Pa002). Following oral argument, default was entered against the Gurveys on June 17, 2021. (*Id.*).

On November 5, 2021, M&T Bank moved for final judgment, which the Gurveys opposed, and the Chancery Division subsequently granted and entered final judgment on December 7, 2021 ("Final Judgement"). (Da012). Thereafter, the Gurveys filed a Notice of Appeal seeking review of the Chancery Division's December 7, 2021 entry of final judgment. (Da013).

During the pendency of the Gurveys' *first* appeal, on January 31, 2022, the Gurveys moved to vacate final judgment, which M&T Bank opposed. The Chancery Division subsequently denied that motion on February 18, 2022, which ultimately became part of their first appeal. (Pa001).

Pursuant to the Final Judgment, a sheriff's sale of the subject Property was scheduled to take place on May 10, 2022. On the same date, the Gurveys filed an emergent application before the Chancery Division to stay the sheriff's sale. (Foreclosure Action, Motion dated May 10, 2022). (Pa.398).

The Gurveys claimed they *voluntarily* entered into an agreement with third-party buyers, Erin Magrini and Gerry Magrini (collectively, the "Magrinis"), to purchase the Property for $1,200,000. (*Id.*). At oral argument on May 10, 2022, the Gurveys implored the Chancery Division to stay the sale of the Property because they wanted to sell the Property to the Magrinis and move to California. (Pa400 at 17:20-21). The Gurveys also stated that they had "been trying to sell the house for quite some time" and they "finally got somebody to sell the house and buy the house." (*Id.* at 18:1-2). Pursuant to the Gurveys' representations, the Chancery Division granted their emergent application and stayed the sheriff's sale until July 7, 2022. (Pa450). To be clear, the Chancery Division's Order did not order the sale of the Property to the Magrinis – it merely stayed the Sheriff's Sale to provide the Gurveys with the opportunity to finalize their sale, which they claimed to so arduously

desire. (*Id.*). The Gurveys then *voluntarily* sold the Property to the Magrinis on July 7, 2022 for $1,200,000.00. (Pa0230).[2]

From the sale proceeds, the Gurveys paid the entire amount owed to M&T Bank and satisfied the full amount of the final judgment. (Pa026). Consequently, on July 22, 2022, M&T Bank filed a Motion for an Order Vacating Judgment and Writ of Execution and Dismissing Proceedings in the Foreclosure Action. (Pa004). The Chancery Division granted the motion, vacated final judgment, and dismissed the Foreclosure Action on August 5, 2022. (*Id.*).

B. Appellate Division's Dismissal of the Gurveys' Appeal in the Foreclosure Action, Finding the Appeal Moot Because the Gurveys Voluntarily Sold the Property and Satisfied the Mortgage

The Gurveys subsequently sought appellate review with respect to the Court's entry of Final Judgment. On or about March 21, 2022, the Gurveys filed an Amended Notice of Appeal to the New Jersey Appellate Division.

[2] While it is not necessary for the determination of the instant appeal, the Gurveys assert a number of statements to the Court that belie credibility. Out of respect for the Court's limited time and resources, M&T Bank will not respond to every unsupported assertion by the Gurveys, and will only address on reply the most egregious false contentions made by the Gurveys. In the instant appeal, the Gurveys continue to advance their false narrative that there was a "forced involuntary sale" of the Property, which resulted in "damages." The Gurveys' revisionist claim that they "involuntarily" sold the Property under duress is a bold-face lie to the Court in an effort to advance their improper agenda.

(Pa451). Despite the fact that the mortgage was fully satisfied and the foreclosure was dismissed on August 5, 2022, the Gurveys insisted on litigating their appeal before the Appellate Division with regard to the dismissed foreclosure.

On April 20, 2023, over the Gurveys' objection, the New Jersey Appellate Division dismissed the Gurveys' appeal as moot, finding that they voluntarily paid off the Final Judgment against them. *See M&T Bank v. Gurvey*, 2023 N.J. Super. Unpub. LEXIS 592 (App. Div. Apr. 20, 2023). Specifically, the Appellate Division found, "[t]he Gurveys neither dispute[d] the payoff amount nor paid it with an express reservation of their rights and remedies." *Gurvey*, 2023 N.J. Super. Unpub. LEXIS 592 at 8-9. Through its April 20, 2023 Opinion, the Appellate Division concluded that the Gurveys made the affirmative choice to voluntarily sell the Property and tender the full amount of the Final Judgment to M&T. *Id.*

The Gurveys' then filed a Motion for Reconsideration on May 1, 2023, which was denied by the Appellate Division on May 15, 2023. (Da013).[3]

C. The Chancery Division's Order Recommending Entry of an Order Granting M&T Bank's Cross-Motion Declaring the

[3] Thereafter, the Gurveys filed their petition for certification to the New Jersey Supreme Court with respect to the New Jersey Appellate Division's decision. On March 5, 2024, the New Jersey Supreme Court entered an Order denying the Gurveys' petition for certification. (March 5, 2024 Order).

Gurveys' Vexatious Litigants, Which is the Subject of This Appeal

On March 27, 2024, the Gurveys filed a motion to vacate their *voluntary* the sale of the Property and summarily challenge the default on the subject mortgage and the validity of the Foreclosure Action. (Pa005). That motion was patently frivolous because the Gurveys *voluntarily* sold the Property to third-party buyers and had no good faith argument in support of their motion. In response to the motion, M&T Bank cross-moved to declare the Gurveys to be vexatious litigants. (*Id.*).

On June 11, 2024, the Chancery Division entered an order denying the Gurveys' motion, and granting M&T Bank's cross-motion declaring the Gurveys to be vexatious litigants, which is the subject of the instant appeal. (Da005). Notably, the Chancery Division specifically recommended to the Essex Vicinage Assignment Judge that an order be entered prohibiting the Gurveys "from filing any further actions, appeals, or motions relating to the subject mortgage, property, sale of the property, or this foreclosure action without prior leave of this Court." (Da006). In the Statement of Reasons accompanying the order, the Chancery Division outlined the Gurveys' vexatious conduct and countless frivolous filings upon which its determination was based. (Da008 – Da023). The Chancery Division noted "[the Gurveys] have an extensive history of receiving sanctions by courts in various

jurisdictions." (Da031). The Chancery Division further noted that it "finds that the procedural history, only some of which is detailed above, evidences a history of vexatious and frivolous litigation by [the Gurveys]." (Da032).

On July 19, 2024, Essex Vicinage Assignment Judge Sheila A. Venable entered an Order grating M&T Bank's cross-motion and declared the Gurveys vexatious litigants. (Da005).

The Gurveys' Law Division Action Against M&T Bank with Respect to the Mortgage and Foreclosure Action

After becoming aware that M&T Bank intended to foreclose on the Property, on June 13, 2017, the Gurveys preemptively filed an action against M&T Bank in the Law Division, under docket number ESX-L-04337-17 (the "Law Division Action"). (Pa084). The Gurveys filed a Complaint and Order to Show Cause against M&T Bank seeking injunctive, declaratory, and monetary relief arising from their ongoing dispute with Montclair Township over property taxes. (*Id.*); *see also Gurvey v. Montclair Twp.*, No. 000339-2011, 2017 WL 1953218 (N.J. Tax May 8, 2017) (unpublished) (Pa338).

The Court denied the Gurveys' Order to Show Cause and the Gurveys thereafter filed several amended pleadings in the Law Division Action. (Pa085). On August 30, 2020, the Gurveys filed a Third Amended Complaint. (Pa088). The Third Amended Complaint asserts seventeen (17) causes of

action against M&T, all of which relate to the Mortgage and Foreclosure Action. (Pa120 – Pa146).

On September 21, 2020, M&T moved to dismiss the Third Amended Complaint, which the Law Division granted, in part, on April 16, 2021. (Pa470). In its April 16, 2021 Order, the Law Division dismissed the bulk of the Gurveys' claims. (*Id.*).[4] In its April 16, 2021 Order, the Law Division also stayed the Law Division Action until the Foreclosure Action was completed. (*Id.*).

After Final Judgment was entered in the Foreclosure Action, the Law Division lifted that stay on December 20, 2021. (Pa463). M&T Bank then moved for summary judgement as to all remaining claims in the Gurveys' Third Amended Complaint on July 22, 2022. (Pa472). M&T Bank's motion for summary judgement was fully briefed, and then on March 1, 2023, the Gurveys' filed a Motion for an Order of Voluntary Dismissal without Prejudice in the Law Division Action. (Pa473).[5] The Law Division granted

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[4] The only claims that remained against M&T were: violation of the Fair Debt Collection Practices Act ("FDCPA") (Count 1); intentional/tortious interference with prospective contractual or economic advantage (Count 3); breach of contract/promissory estoppel (Count 8); breach of covenant of good faith and fair dealing (Count 9); improper disbursement of loan payments (Count 10); conversion of loan payments (Count 11); and defamation (Count 13).(Pa462).

[5] Another egregious false contention made by the Gurveys is that they have not had a hearing or trial on the merits of the Law Division Action. (Gurveys'

the Gurveys' motion, and entered an order granting voluntary dismissal, and found M&T Bank's motion for summary judgement to be moot in light of the Gurveys' voluntary dismissal on August 2, 2023. (LDa040). To be clear, the Law Division did not deny M&T's Motion for Summary Judgment on its merits; rather, the Law Division found it moot due to the voluntary dismissal. (*Id*.)

The Gurveys' Federal Actions with Respect to the Mortgage and Foreclosure Action

A. The First Federal Action

On or about June 25, 2020, the Gurveys commenced litigation against M&T Bank in the New Jersey District Court, under Case No.: 2:20-cv-07831 (the "First Federal Action"), wherein they asserted claims with respect to the Mortgage and Foreclosure Action. (Pa149, Pa194 – Pa222).

M&T Bank filed a motion to dismiss the Gurveys' complaint in the First Federal Action on September 4, 2020. (Pa150). The District Court granted the motion on December 17, 2020 and dismissed the claims based on the *Colorado River* Abstention Doctrine. (Pa225). The Gurveys then filed a motion for reconsideration of the dismissal on January 4, 2021, which was

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App. Br. at 18-19). These contentions by the Gurveys are not only complete mischaracterizations of the procedural rulings in this action, but they are delusional. As the record reflects, the Gurveys' voluntary dismissed the Law Division Action before oral argument was to be heard on M&T Bank's Motion for Summary Judgement. (Pa473-Pa474).

denied by the District Court on February 4, 2021. (Pa150). On or about June 14, 2021, the Gurveys filed a Notice of Appeal of the Order and Letter Opinion denying their motion for reconsideration to the Third Circuit, under Case No.: 21-2142. (Pa229).

On June 22, 2021, the Third Circuit, *sua sponte*, requested the parties' positions on whether the case should be dismissed due to a jurisdictional defect. (Pa230). The parties fully briefed this issue and the Third Circuit dismissed the appeal on December 14, 2021. (*Id.*). The Gurveys filed a petition for a rehearing, which was denied on January 12, 2022. (Pa233).

On or about August 10, 2021, the Gurveys filed a motion to vacate the dismissal order and amend their complaint in the First Federal Action. (Pa152). The District Court denied this motion on September 14, 2021. (Pa153). The Gurveys then filed a Notice of Appeal of the Order and Letter Opinion denying their motion to vacate the dismissal order and to amend their complaint to the Third Circuit on October 12, 2021, under Case No.: 21-2936. (Pa234). On November 3, 2021, the Third Circuit, *sua sponte*, dismissed that appeal. (Pa236).

Undeterred by the District Court and Third Circuit's well-reasoned decisions, the Gurveys filed four (4) baseless and redundant motions seeking, yet again, to vacate prior rulings, amend the complaint, reconsideration, and to

move for summary judgment on damages in the First Federal Action. (Pa153 – Pa155).

On July 21, 2022, the District Court entered a Letter Order denying all of the Gurveys' motions and "strongly cautioned [the Gurveys] that any further attempts to reopen or relitigate [the First Federal Action] based on previously rejected legal theories may result in sanctions against them." (Pa243).

B. The Second Federal Action

On or about September 1, 2021, the Gurveys commenced a second affirmative litigation against M&T Bank in the New Jersey District Court under Case No.: 2:21-cv-016397 (the "Second Federal Action") by filing an Order to Show Cause against a litany of defendants, including M&T's Bank's attorneys and various judges who ruled against them. (Pa244). Again, the Gurveys sought substantially similar relief against M&T Bank with respect to the Mortgage and Foreclosure Action. (*Id.*). The Gurveys' Order to Show Cause was denied on September 8, 2021. (Pa246).

Thereafter, on September 29, 2021, the Gurveys filed a motion for reconsideration, which the District Court denied on October 1, 2021. (*Id.*).

On October 12, 2021, the Gurveys filed a Notice of Appeal of the Order denying their motion for reconsideration, under Case No. 21-2953. (Pa475).[6] During the pendency of the Gurveys' appeal, on October 15, 2021, the Gurveys filed a motion to consolidate their First and Second Federal Actions in the Third Circuit, under Case No. 21-2142. (Pa246). That motion was denied on December 14, 2021. (*Id*.). On January 27, 2022, the Gurveys filed an Amended Complaint in the Second Federal Action and continued to assert baseless and duplicative causes of action against M&T Bank with regard to the Mortgage and Foreclosure Action. (Pa281 – Pa319). M&T Bank moved to dismiss the Amended Complaint on April 7, 2022. (Pa248). On November 22, 2022, the District Court entered a Letter Order staying the Second Federal Action pending the outcome of the Law Division Action under the *Colorado River* Abstention Doctrine. (Pa481).

On October 26, 2024, the Gurveys filed a motion to reopen their appeal, under Case No. 21-2953. (Pa478). Immediately thereafter, on October 29, 2024, the Third Circuit entered an order denying the Gurveys' motion and noted,

> The Gurveys are advised that the Court will not consider or act on any future filings in this case. The Clerk is directed to terminate the Gurveys' electronic filing privileges for excessive filings,

[6] The appeal, under Case No. 21-2953, was terminated on May 2, 2022. (Pa478)

> pursuant to 3d Cir. L.A.R. Misc. 113.2(b). Should the Gurveys submit any future filings for this case by regular mail or email, the Clerk shall not place the filings on the docket.

(Pa479).

C. The Third Federal Action

While the New Jersey state appeal was pending, and after the District Court stayed the Second Federal Action, on February 21, 2023, the Gurveys commenced a third affirmative litigation against M&T Bank in the New Jersey District Court, under Case No.: 2:23-cv-01007 (the "Third Federal Action"). The Gurveys' Complaint, yet again, asserted redundant causes of actions against M&T's Bank, its attorneys, and various judges who ruled against the Gurveys with respect to the Foreclosure Action. The Gurveys seek substantially similar relief against M&T Bank with respect to the Mortgage and Foreclosure Action. On May 8, 2023, M&T Bank and its attorneys jointly moved to dismiss the Gurveys' Complaint. (Pa494). On November 21, 2023 the District Court entered an Order dismissing virtually all of the Gurveys' causes of action, with the exception of Count 13. (Pa496). M&T Bank moved to dismiss the last remaining claim on December 5, 2023, which the District

Court granted on July 31, 2024 in a Letter Order which also denied all six of the Gurveys' pending motions.[7] (Pa501).

Most notably in the District Court's Letter Order, the Honorable Madeline Cox Arleo, U.S.D.J., issued the Gurveys a final warning and ordered the Gurveys to refrain from initiating any duplicative or repetitive actions, nor file motions, pleadings, or other papers of the same nature, which in any way touch on the Foreclosure Action. (Pa508 - Pa510). Specifically, Judge Arleo stated

> In its November 2023 Order, this Court warned Plaintiffs that "attempts to reopen or relitigate this action based on [these or] previously rejected legal theories may result in sanctions against them." November 2023 Order (alteration in original). Plaintiffs have ignored the Court's warning. Those "legal theories" include the vacatur of all of Judge Wigenton's Orders. In fact, aside from the underlying foreclosure action, this seems to be the primary basis of all of Plaintiffs' claims. Despite the Third Circuit denying mandamus for such relief and this Court dismissing these same arguments over six months ago, Plaintiffs filed six largely duplicative motions since the November 2023 Order on this same issue and other issues that have previously been resolved by this Court. This is a clear abuse of the judicial system, and Plaintiffs' abusive tactics have placed an unnecessary burden on their adversaries and this Court.

(*Id*.). As there were no surviving claims, the Third Federal Action was thereby terminated.

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[7] During the pendency of M&T Bank's second Motion to Dismiss, the Gurveys' filed six frivolous applications in an attempt to attack the Foreclosure Action as well as harass M&T Bank, its attorneys, and the Court. (Pa497 – Pa500).

LEGAL ARGUMENTS

This Court should dismiss the arguments related to the sale of the Property because all claims are barred by the Law of the Case Doctrine, *res judicata*, and collateral estoppel, and otherwise meritless. The Court should affirm the order declaring the Gurveys vexatious litigant because it is correct in every respect.

POINT I: THIS APPEAL IS BARRED BY THE LAW OF THE CASE DOCTRINE, *RES JUDICATA*, AND COLLATERAL ESTOPPEL

The instant appeal must be dismissed by the fact that any claim the Gurveys could conceivably assert against M&T Bank with regard to the Foreclosure Action is barred by the Law of the Case Doctrine, *res judicata*, and collateral estoppel.

A. This Appeal Is Barred By The Doctrine Of Law Of The Case

In this case, the instant appeal is replete with the same arguments that have been reviewed and rejected *ad nauseum*, and is merely the latest attempt on behalf of the Gurveys to overturn the Chancery Division's entry of Final Judgment and litigate the same issues yet again. The Law of the Case Doctrine requires that this Court respect the decision made by the Appellate Division with respect to the propriety of the foreclosure and entry of Final Judgment. *See State v. Stewart, 196* N.J. Super. 138, 143-44 (App. Div.), *certif. denied, 99 N.J. 212* , 491 A.2d 707 (1984); *State v. Myers, 239* N.J. Super.

158, 164 (App. Div.), *certif. denied,* 127 N.J. 323 (1990). Accordingly, the Gurveys' instant appeal is barred by the Law of the Case doctrine, and must be dismissed.

The Law of the Case Doctrine "'generally requires a decision of law made in a particular case to be respected by all other lower or equal courts during the pendency of that case.'" *CFG Health Sys., LLC v. Cnty. Of Essex,* 411 N.J. Super. 378, 384 (App. Div. 2010) (quoting *State v. Reldan*, 100 N.J. 187, 203 (1985)); *accord Lombardi v. Masso*, 207 N.J. 517, 538 (2011) (quoting *Lanzet v. Greenberg*, 126 N.J. 168, 192 (1991)). The doctrine generally applies to "legal issues in the same case." *Franklin Med. Assocs. v. Newark Pub. Schs.*, 362 N.J. Super. 494, 512 (App. Div. 2003)); *see also Sisler v. Gannet Company, Inc*., 222 N.J. Super. 153, 159 (App. Div. 1987) (finding "the law of the case doctrine requires judges to respect unreversed decisions made during the trial by the same court or a higher court regarding questions of law"). "For the determination of an issue to constitute the law of the case … the issue must have been contested and decided." *Lanzet*, 126 N.J. at 192. Under the doctrine, "[p]rior decisions on legal issues should be followed unless there is substantially different evidence at a subsequent trial, new controlling authority, or the prior decision was clearly erroneous." *Sisler*, 222 N.J. Super. at 159.

Here, the Gurveys' seek to relitigate their default on the subject mortgage and the validity of the Foreclosure Action. However, the Appellate Division already made a determination as to the validity of the Gurveys' sale of the Property and their satisfaction of the mortgage loan, and conclusively established the propriety of the Foreclosure action on April 20, 2023. *See M&T Bank v. Gurvey*, 2023 N.J. Super. Unpub. LEXIS 592 (App. Div. Apr. 20, 2023). Indeed, in the Gurveys' appeal, the Appellate Division found the Gurveys' continued challenges to the foreclosure to be moot by the fact they voluntarily sold the Property to third-party buyers and paid off the mortgage loan. In its decision, the Appellate Division reasoned "[t]he Gurveys neither dispute the pay-off amount nor paid it with an express reservation of their rights and remedies." (*Id*.).

The Gurveys' instant appeal is nothing more than a disgruntled attempt to raise the same exact arguments that have already been rejected dozens of times over. As this Court noted "[t]he Gurveys have a lengthy history of protracted litigation in various courts." (*Id*.).

This Court already addressed this alleged issue in its April 20, 2023 Opinion, and the Law of the Case Doctrine requires that this Court respect the decision made by the Appellate Division with respect to the propriety of the

foreclosure.[8] As such, the Law of the Case Doctrine therefore bars these challenges here.

B. This Appeal Is Barred By *Res Judicata* And Collateral Estoppel

The Gurveys' instant appeal is also barred by the doctrines of *res judicata* and collateral estoppel because the claims pertain exclusively to the Foreclosure Action, which was previously litigated and adjudicated by the Appellate Division.

"The term '*res judicata*' refers broadly to the common-law doctrine barring re-litigation of claims or issues that have already been adjudicated." *Velasquez v. Franz,* 123 N.J. 498, 505 (1991); *In re Estate of Gabrellian*, 372 N.J. Super. 432, 446 (App. Div. 2004) ("Res judicata . . . has the salutary purpose of preventing re-litigation of the same controversy between the same parties."). *Res judicata* applies "not only to matters ***actually*** determined in an earlier action, but to all relevant matters that ***could have been so determined***."

[8] Putting aside the fact that the Appellate Division already decided this issue, the New Jersey Supreme Court likewise rejected the Gurveys' petition for certification as to the Appellate Division's decision. (Da013 – Da014). This Court simply does not have jurisdiction to reconsider the Appellate Division's decision. No matter how badly the Gurveys want to continue their vexatious litigation campaign against M&T and waste the Court's time and resources litigating about the validity of the sale of the Property, this Court simply does not have jurisdiction to review or overturn the Appellate Division's decision, which is now final due to the Supreme Court's denial of certification.

Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412-413 (1991) (emphasis added).

Similarly, "collateral estoppel" is a preclusive doctrine that bars litigation of facts fully litigated and actually determined in a prior action involving a different claim or cause of action. *See Tarus v. Borough of Pine Hill*, 189 N.J. 497, 520 (2007) ("Collateral estoppel, in particular, represents the 'branch of the broader law of *res judicata* which bars re-litigation of ***any issue*** which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action.'" (*quoting Sacharow v. Sacharow*, 177 N.J. 62, 76 (2003))). If "an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *See State of N.J. v. Redinger*, 64 N.J. 41, 45 (1973).

Under New Jersey law, "[t]o foreclose relitigation of an issue based on collateral estoppel, 'the party asserting the bar must show that (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier

proceeding.'" *Twp. of Middletown v. Simon*, 193 N.J. 228, 236 (2008). In the instant matter, the Gurveys' Appeal is based exclusively upon the improper notion that the validity of the Foreclosure Action has not been conclusively adjudicated. However, these issues have already been resolved by the Appellate Division when the Appellate Division determined that the Gurveys' homogenous appeal challenging the propriety of the Foreclosure Action was moot, *after* the Gurveys *voluntary* sale of the Property. *See Gurvey*, 2023 N.J. Super. Unpub. LEXIS 592 (App. Div. Apr. 20, 2023).

In New Jersey, it has long been recognized that the three issues which the court should determine in a foreclosure action, and which the lender must establish, are that: "(1) the mortgage and loan documents are valid; (2) the mortgage loan is in default; and (3) it has a contractual right to foreclose in light of the default." *U.S. Bank Nat'l Ass'n v. Thomas*, 2010 WL 1029872, at *2 (N.J. Super. Ct. App. Div. Mar. 23, 2010). Indeed, these elements were established in the Foreclosure Action and affirmed on appeal. *See M&T Bank v. Gurvey*, 2023 N.J. Super. Unpub. LEXIS 592 (App. Div. Apr. 20, 2023). As such, these issues cannot be re-adjudicated here. The Gurveys' only option was to appeal the Final Judgment to the New Jersey Appellate Division, which they did and they lost. (*Id.*). Accordingly, the Gurveys' instant appeal is barred by *res judicata* and collateral estoppel, and should not be entertained.

POINT II THE COURT'S ORDERS ARE CORRECT

Beyond being barred by the preclusive doctrines cited above, the trial court's orders were correct in every respect. The Gurveys make random claims related to cases involving "a dispute over whether New York's law required banks to pay interest on escrow accounts was preempted by federal banking law" and whether RESPA applies to post foreclosure activities. The Gurveys also make unsupported claims related to RESPA. None of this has a relevancy to this case and the Gurveys' claims have all been property disposed of by the state and federal courts.

The trial court's orders where all correct in every respect and should be affirmed.

POINT II: THE CHANCERY DIVISION DID NOT ABUSE ITS DISCRETION WHEN IT ENTERED AN ORDER DECLARING THE GURVEYS VEXATIOUS LITIGANTS

As outlined above, the Guveys have filed countless redundant and meritless applications before various New Jersey state and federal courts related to M&T Bank and this Property. Accordingly, the Court should affirm the Chancery Division's Order declaring the Gurveys vexatious litigants.

A. The Gurveys' Failed to Show That The Chancery Division's Decision Was An "Abuse Of Discretion"

A court's order to enjoin a litigant from further filings is reviewed for abuse of discretion. *See Parish v. Parish*, 412 N.J. Super. 39, 51 (App. Div. 2010); *Rosenblum v. Borough of Closter*, 333 N.J. Super. 385, 392 (App. Div. 2000). To meet this heavy burden, the moving party must show that the trial court's decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." *Terranova v. Gen. Elec. Pension Tr.*, 457 N.J. Super. 404, 410 (App. Div. 2019) (quoting *U.S. Bank Nat'l Ass'n v. Guillaume*, 209 N.J. 449, 467 (2012)) (internal quotation marks omitted).

"[C]ourts have the inherent authority, if not the obligation, to control the filing of frivolous motions and to curtail 'harassing and vexatious litigation.'" *Parish*, 412 N.J. Super. at 48 (internal citations omitted). Restrictions against a litigant's filing of prospective motions are appropriate in certain circumstances. *See Quaziz v. Ghazoini*, No. A-2111-22, 2023 N.J. Super. Unpub. LEXIS 2285, at *13-14 (App. Div. Dec. 14, 2023) (finding no abuse of discretion by the judge in reaching his determination that a *Rosenblum* order was necessary because "the judge appropriately considered and found significant that the plaintiff's last motion was his third attempt to relitigate the same issues . . . that he had unsuccessfully brought before the court one year earlier. [The Appellate Court] agree[d] with the judge that this third motion

was frivolous because plaintiff raised no new arguments for the court to consider and instead continued to express his dissatisfaction with . . . orders."). Moreover, self-represented litigants are required to comply with the court rules the same as litigants who are represented by counsel. *Rubin v. Rubin*, 188 N.J. Super. 155, 159 (App. Div. 1982).[9]

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[9] Although she represents herself *pro se* in this proceeding, Ms. Gurvey is a former attorney that was suspended from the practice of law in the State of New York for her habitual bad faith filings precisely of this nature. *See Matter of Gurvey*, 102 A.D.3d 197 (1st Dept 2012). The State of New York suspended Ms. Gurvey from the practice of law for conduct as a party litigant, that was "indicative of harassment and an abuse of the judicial process" and "mean spirited and vexatious," and it was found that her "inappropriate use of the courts" resulted in "needless expense in the defense of a frivolous lawsuit." *Id.*, at 198. More specifically, she was sanctioned for "years of vituperative litigation," frivolous motion practice, and intentional misrepresentations to the court. *Id.*; *see also Gurvey v. Legend Films, Inc.*, No. 09-CV-00942 (AJB) (BGS), 2013 U.S. Dist. LEXIS 8578 (S.D. Cal. Jan. 22, 2013) (denying two motions for reconsideration brought by Ms. Gurvey and threatening sanctions if she so moved again, and ultimately granting opponent's motion for sanctions at 2013 U.S. Dist. LEXIS 100477 (S.D. Cal. Apr. 8, 2013)); *Gurvey v. Cowan, Liebowitz & Latman*, No. 06-CV-01202 (LGS), 2015 U.S. Dist. LEXIS 9823 (S.D.N.Y. Jan. 28, 2015) (denying relief sought by Ms. Gurvey pursuant to *Rule* 60(b)(6); *see also Gurvey v. Lippman*, No. 18-CV-2206 (AT), 2018 U.S. Dist. LEXIS 171354 (S.D.N.Y. Oct. 2, 2018) (denying Ms. Gurveys' *Rule* 60(b) motion seeking reconsideration of order dismissing claims against New York state court judges and court personnel following her suspension from the practice of law and warning Ms. Gurvey for a second time "that further frivolous litigation may result in the imposition of sanctions, including monetary penalties and filing injunctions."); *Gurvey v. N.Y.*, Case No. 135611, 2021 N.Y. Misc. LEXIS 4113 (N.Y. Ct. Claims Apr. 26, 2021) (recognizing Ms. Gurvey "has previously been enjoined from filing claims without permission and is now warned that the future filing of similar claims or meritless motions may result in the imposition of sanctions."); *Gurvey v. DiFiore*, No. 19-CV-4739 (LDH) (ST), 2021 U.S. Dist. LEXIS 188878

The Gurveys' vexatious and frivolous conduct is well-documented. The state and federal courts of New Jersey are replete with failed actions and appeals filed by the Gurveys. For instance, not including the instant action, the Gurveys filed the following in the last seven (7) years:

New Jersey Superior Court, Law Division

1. *Gurvey, et al. v. M&T Bank Corporation, Inc.*, Docket No. ESX-L04337-17

New Jersey Superior Court, Appellate Division

2. *M&T Bank v. Gurvey, et al.*, Docket No. A-749-21T4

United States District Court for the District of New Jersey

3. *M&T Bank v. Gurvey, et al.*, Case No. 2:18-cv-12702
4. *Gurvey, et al. v. M&T Bank, Inc., et al.*, Case No. 2:20-cv-07831
5. *Gurvey et al. v. Grant, et al.*, Case No. 2:21-cv-16397
6. *Gurvey, et al. v. M&T Bank, Inc., et al.*, Case No. 2:23-cv-01007

United States Court of Appeals for the Third Circuit

7. *M&T Bank v. Gurvey, et al.*, Case No. 19-2006
8. *In re Amy Gurvey*, Case No. 19-2130
9. *Gurvey, et al. v. M&T Bank, Inc., et al.*, Case No. 21-2142
10. *Gurvey, et al. v. M&T Bank, Inc., et al.*, Case No. 21-2936

(E.D.N.Y. Sept. 30, 2021) (barring Ms. Gurvey from filing civil actions in the Eastern District of New York without prior leave of the Court).

11. *In re: H. Gurvey, et al.*, Case No. 22-1713

12. *In re: H. Gurvey, et al.*, Case No. 22-2562 [10]

In light of the record in this action, the Gurveys have failed to meet their heavy burden. Simply stated, the order declaring the Gurveys vexatious litigants was rational and consistent with established policy and rested on a permissible basis. In fact, it was correct and the only way to stop the Gurveys from wasting the Court and the parties time with repetitive baseless filings. It obvious from the record that filing vexatious meritless litigations has become a hobby for the Gurveys. This Court should affirm the Orders of the trial court.

CONCLUSION

For the foregoing reasons, this Court should affirm the rulings below.

/s/Aaron M. Bender
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[10] For the avoidance of doubt, not one of the above-referenced courts have ever found the Gurveys' claims to have merit; nonetheless, the Gurveys continue to re-file their baseless claims and actions against M&T and its attorneys in a fruitless endeavor to find a judge and court to buy into their frivolous allegations.

M&T Bank S/B/M to Hudson City Savings Bank

Dated: April 14, 2025

H. SCOTT GURVEY
[AMY GURVEY FICTITIOUS SPOUSE]
7302 Woodstone Circle
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Appellants-Defendants.

M&T BANK S/B/M TO HUDSON CITY SAVINGS BANK,
Plaintiff-Respondent

v.

H. SCOTT GURVEY; MRS. H. SCOTT GURVEY; Fictitious spouse of H. SCOTT GURVEY; AMY R. GURVEY
Defendant-Appellants PRO SE.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION:
DOCKET NO.
A-003760-23 TEAM 04

CIVIL ACTION
ON APPEAL FROM

SUPERIOR COURT,
CHANCERY DIVISION,
ESSEX COUNTY
DOCKET NO.
SWF-014035-18

ORAL ARGUMENT REQUESTED

Sat Below:
Hon. Jodi Lee Alper, Pj.Ch.

Hon. Sheila Venable, A.J.S.C.

Gurvey Defendant-Appellants' Reply to Respondent-Appellee M&T Bank's Amended Opposition Brief and Appendix filed to Orders of the Chancery Division of Essex County New Jersey and the Assignment Judge

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INTRODUCTION

As certain as the sun rises in the East and sets in the West, foreign Respondent-"Appellee" M&T Bank of Buffalo, NY has again submitted an opposition brief to this New Jersey appeals court proffering a litany of fraudulent and frivolous statements, failing to admit to continued indebtedness fraud and money laundering crimes in violation of Regulation X of RESPA, 12 CFR 1024, and omitting material orders from a proffered chronology ordered by Chancery Judge Alper in 2023 that the Gurveys were forcibly precluded by order from challenging in violation of due process of law. That order is missing from Appellant M&T's chronology. All these unlawful acts **occurred after the last appeal was submitted and closed in April 2022**. These orders and the duties of Appellate M&T to comply with all RESPA Regulations endure through the date of the involuntary forced sale, July 6, 2022. They cannot be precluded from this appeal. Damages for these acts were upheld with other relief by the Law Division twice in 2023 and authorized on the record by the Chancery Judge Alper in 2022. Mandates of the US Supreme Court preclude merger and bar. *Lucky Brand Dungarees v. Marcel Fashions*, 590 US 405, 140 S. Ct. 1589 (2020). Nor can other damage claims for loss of home, fraud and theft of $800,000, Fair Debt Collection Practices Act damages, 16 USC 1692e, eviction and relocation damages, unprivileged defamation,

consumer fraud treble damages and damages for personal injuries be precluded against all named defendants. *Ibid.* Moreover, defendant M&T did not challenge any of the three principal points in Appellants' moving brief in chief, such that the points are deemed admitted. NJ Ct. Rule 6:2-6.

REPLY

Essential to this Reply is that Appellee M&T, and its debt collectors Reed Smith and Aaron Bender did not challenge any of the three principal points raised by the Gurvey Appellants in their moving brief. M&T's fraud by omission is proven. **Sorely omitted from Appellee's opposition is that in 2016, M&T entered into a binding contract with homeowner H. Scott Gurvey and closed the optional tax escrow account provided for under his Hudson City Savings Bank (HCSB) 2002 mortgage contract.**[1] Defendant M&T could not reopen another account unilaterally without a binding modification that never existed and re-channel Petitioner's monthly principal and interest payments into that account and never account for THE STOLEN money. This is money laundering at its finest.[2] The Gurveys' DNJ 2018 removal action

[1] Note that Amy Gurvey is listed as a fictitious spouse.

[2] M&T knew of its fraud. Gurveys were under the protection of the NJ Tax Court since 2011. A000339-2011. M&T was noticed by the Tax Court Judge Joshua T. Novin that no deficiency lien had been filed or could be filed without court order. M&T was even invited to join the Tax Court litigation against Montclair Township. The Gurveys finally won the tax appeal in 2000 having overpaid taxes by more than $50,000. If M&T paid any taxes to Montclair which it never proved by any documents in Law Division discovery, it defied the binding contract it made with the Gurveys and its remedy is solely against Montclair as a bad Samaritan.

to the illegal state foreclosure complaint is also sorely missing from M&T's chronology that the Gurveys were denied the right to challenge in 2023.

M&T expressly admits to a dispute over property taxes. Pursuant to Para. 6B of the Gurvey's 2002 HCSB mortgage contract, a dispute over property taxes cannot trigger remedies of acceleration or foreclosure. This state contract term was required to be hearing on the merits by Judge Alper because it does not conflict with preempting federal Regulation X RESPA statutes. *Cantero v. Bank of America*, 602 US 205 (2024)

New Jersey Rules of Court emphasize the importance of addressing principal arguments raised in the adverse party's moving appellate brief. Specifically Rule 2:6-2 outlines the requirements for the contents of an opposition brief including the need for a clear, honest and concise argument section that responds to the main points raised by the adverse party. Courts interpret unaddressed points and deceitful statements as admissions of the moving party's arguments.

Here, M&T omits challenges to the most important issues in this appeal raised by the Gurveys and also proposes to introduce hundreds of pages of challenged documents including documents in an appendix which cannot as a matter of law be the subject of issue preclusion, claim preclusion or judicial notice. *Lucky Brand Dungarees v. Marcel Fashions*, 590 US 405, 140 S. Ct. 1589

(2020) The orders are challenged in facts, nonfinal and remain on appeal. Paramount before this Court is theft of $800,000 of funds stolen from an involuntary forced sale on July 6, 2022, when no indebtedness hearing was ever convened mandated until the date of sale under RESPA. The Gurveys also recovery of monumental damages for loss of their home, eviction, relocation, equipment, unprivileged defamation and damages to health and emotional distress. The home belongs to H. Scott Gurvey. Moreover, contrary to Appellee's ongoing *ex parte* fraud before four judges, "fictitious spouse" Amy Gurvey **is not admitted to practice law in NYS, has never been sanctioned or disbarred as an attorney, proving Appellee and its debt collectors' ongoing *ex parte* unprivileged defamation in *ex parte* communications with the court. These acts warrant damages to career and business offices.** Appellee's ongoing acts were not before the lower court or this appellate court in the previous interlocutory appeal. That appeal closed in April 2022, three months before the involuntary forced sale when indebtedness hearings were promised and never convened. *Lucky Brand Dungarees v. Marcel Fashions*, 590 US 405, 140 S. Ct. 1589 (2020).

Established standards of NJ procedure make it incumbent upon this appellate court to conclude that Appellee M&T's ongoing failure to even reference, let alone challenge, recitations of non-existent facts of law regarding Appellant's

three points they have raised, means Appellee M&T has admitted to those facts and law. Appellee's appendix - introducing documents which are nonfinal, challenged past orders, are not germane to this appeal and in most cases were never before the lower court - should be rejected in their entirety. This appeals court must proceed forthwith to accept Appellant's facts and legal arguments and grant Gurvey Appellants all relief they seek in their brief in chief.

To summarize Appellant's points briefly:

> **Appellant's Point I:** Assignment Judge Sheila Venable and Chancery Judge Jodi Lee Alper abused their delegated powers, limited jurisdiction and authority, violated the law of the case of the Law Division based on orders entered in 2017-2018, and deprived Appellants of their constitutional rights to due process, equal protection, and preemption to mortgage relief statutes under Regulation X of RESPA and the Supremacy Clause of the United States Constitution.

Assignment Judge Sheila Venable strayed way beyond her purely ministerial role in making permanent Judge Jodi Alper's intemperate rulings in her attempt to ignore the Law Division orders in 2023 that only the Appellate Division can review on appeal. The Law Division action was the priority case filed by the Gurveys and was unlawfully stayed in 2018 with no documents produced in discovery. Judge Alper could not give Appellee M&T another bite at the apple. Instead Judge Alper had to file the law of the case. Judge Venable ALSO defied law of the case based on Judge Alper's own rulings and concessions on the record on

May 10, 2022,(3T) that the Gurveys can get damages in another court Judge Alper CANNOT GET involved in peripheral lawsuits in this case. The Law Division motions were therefore properly filed by Appellants and won by Appellants including on reconsideration because they never got a hearing on the merits or a trial on any of their priority claims filed against Law Division defendant M&T that remain pending since 2017.

Judge Venable further abused discretion by entering a filing ban extending beyond the Chancery Division from which it came (Da4) to include the Law Division which had already upheld Petitioner's right to continue litigation against defendant M&T and its debt collectors in two orders entered in 2023. (Da40, Da42) Appellee M&T makes no reference to this point in their amended brief and make no objection to the granting of the relief requested by Appellants. It is incumbent upon this court to grant that relief.

Appellant's Point II: Chancery erred in denying Appellants a motion to reconsider due to a material changes in prevailing RESPA law including that the duties of Appellee M&T endure through the date of sale. These duties could not be *sua sponte* discharged without motions on notice by Judge Alper's entry of a default judgment on December 7, 2021. The new orders would have changed the court's earlier determinations since 2021 and highlight the ongoing unlawful acts by Appellees undertaken after the last appeal was submitted in April 2022. Instead of acknowledging the new law, Chancery ignored the law, and abused discretion in finding Appellants to be "frivolous litigants" sua sponte when the statutory conditions for such a finding do not exist, the Gurveys do not meet the definition and Judge Alper herself was the proper subject of prospective injunctive relief before the district court in 2021, orders

> only not granted because the sitting judge owned a concealed stock interest in Appellee M&T since 2015.

The US Supreme Court is clear that the existence of a new, preemptive, federal court decision is an appropriate use of a motion to reconsider. It cannot be frivolous. The Chancery Court's determination is clear abuse of discretion and reversible error. Appellee M&T makes no reference to this point in their amended opposition brief and makes no objection to the granting of the relief requested by Appellants. It is incumbent upon this court to grant that relief.

> **Appellant's Point III:** Chancery erred in finding that the illegal foreclosure complaint efiled with fraudulent attestations under oath in 2018 was uncontested, failed to follow law of the case orders in the Law Division action through 2018, and denied Appellants due process of law by refusing to hear their answer, counterclaims and opposition filed in the Law Division action in 2017 and in the district court that were transferred back to Chancery sua sponte based on Judge Wigenton's finding that she lacked jurisdiction, when she owned stock in M&T and could not preside, rendering this order and the next two orders the proper subject of mandamus orders.

Appellee M&T does not deny that Appellants contested the foreclosure not only from the date of filing of that action in the Chancery Court, but for one year prior to that illegal filing when they raised M&T Bank's threats and false accusations by filing a suit for judgment, injunctive relief, and damages in the Law Division.

Appellants also filed a cross motion in the Federal District Court after they removed the case to that venue in

August 2018. Both the cross motion and their answer and counterclaims were filed in a cross motion seeking dismissal with prejudice that was ignored because Judge Wigenton owned a concealed stock interest in respondent M&T. All these documents were remanded in bulk to the Chancery Court in 2019 with Appellants paying the New Jersey filing fee. The payment was accepted and cashed by the New Jersey Courts. These actions are documented in the official docket. Yet the Chancery Court consistently refused to acknowledge the remanded documents as found at hearing on February 18, 2022. Judge Alper admitted she never read any of the Appellant's documents. Ergo, how could she rule that no answer and counterclaim had been filed and enter a default. It is based on these ludicrous orders that leave to appeal was granted by this court on November 12, 2021.

None of this changes the simple fact that the Chancery Division, in violation of statutes as well as provisions of the Constitutions of both the United States and the State of New Jersey denied Appellants of this right to defend themselves against an illegal foreclosure and as found already by this court, abused discretion when it determined that the foreclosure was "uncontested" despite overwhelming factual evidence to the contrary.

Plaintiff-Respondent's make no reference to this point in their amended opposition brief and proffer no objection to the

granting of the relief requested by Appellants. It is incumbent upon this court to grant that relief.

RESPONDENT'S BRIEF

Appellee's opposition brief presents a lengthy procedural history misstating the record and omitted essential orders. Instead, M&T's standard *ad hominem* attacks continued against only Appellant Amy's character, which are false and defamatory. They continued to be proffered to the DNJ judge ex parte that were copied *sua sponte* by Judge Arleo in an order entered July 22, 2022, warranting damages. Appellee only presents two new points followed by an extensive appendix for which countless numbers of trees were sacrificed. None of the documents in Respondent's Appendix are germane to the questions presented in this appeal. This appellate court should dismiss Appellee's filing in its entirety for its failure to conform to the rules of procedure and grant Gurvey Appellants the relief they have requested.

Once again Respondent misstates the facts and the law, writing "As outlined above, the Gurveys have filed countless redundant and meritless applications before various New Jersey and federal courts…."

The Chancery Court's review is limited to the motion in question before it, not other motions, and not other courts. Judicial notice cannot be taken of past challenged orders,

orders on appeal and non-final orders. Review is governed by NJ Rev Stat § 2A:15-59.1 (2024) which requires a finding of bad faith intent, no reasonable basis in law or fact, completely unsupported claims, or improper purpose.

This Appellate Court must strike Chancery's finding that this motion was frivolous and strike its award of sanctions and fees because the standards required by § 2A:15-59.1 were not met.

The following points are sorely missing from the chronology submitted by Appellee M&T at the request of Judge Alper that in violation of due process the Gurveys were precluded from challenging.

1. The Gurveys were never in "default" under their 2002 mortgage loan contract, a document that expressly precludes the remedies of acceleration or foreclosure for a dispute over property taxes (which Appellee M&T admits to) (Amended Appendix of Plaintiff-Respondent Pa392, Para. 6B).[3] [4] Ergo, Appellee's papers are frivolous, a sham and a charade.

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[3] *Cantero v. Bank of America NA,* 602 US 205 (2024) holds that the terms of the Gurveys' HCSB mortgage contract that preclude acceleration or foreclosure of a mortgage loan for a dispute over property tax, not being in conflict with federal statutes must be upheld and giving hearing by the adjudicating tribunal.

[4] The HCSB merger closed in November 2015 but only after a five-year delay ordered by the Federal Reserve until the Government was satisfied that money laundering and consumer mortgage fraud crimes had been reversed in thousands of customer accounts.

2. Appellant's removal action filed August 2018 in response to the fraudulent and illegal foreclosure complaint is sorely missing. Immediately the Gurveys lost a certified cash buyer's contract for their home and $930,000 cash, the concrete based treble damages immediately recoverable under NJ's Consumer Fraud Act, NJSA 56:8, 1-20. Judge Alper had the power to grant these damages under NJ's Constitution. Art. VI, Section III, Para. 4, but Judge Alper never allowed a hearing.

3. The *sua sponte* orders entered in 2021 and 2022 without motions on notice by Judge Wigenton are missing. These orders sua sponte improperly denied Fair Debt Collection Practices Act, 15 USC 1692e damages against Appellee M&T, debt collectors Schiller Knapp Lefkowitz & Hertzel; Reed Smith; and denied injunctive relief and declaratory determinations against Judge Alper and state officers of the NJ courts for promulgating unconstitutional protocols in state mortgage litigation and mortgage relief litigation. *Ex parte Young*, 209 US 123 (1908); *Kentucky v. Graham*, 473 US 159 (1985)

3. The *sua sponte* orders entered by Judge Alper denying Appellant's the constitutional right in 2023 to challenge the chronology list submitted by Appellee and its debt collectors are missing in violation of due process of law.

4. The orders of Judge Alper failing to convene a hearing on the fraudulent indebtedness statements between 2021 and the date of involuntary sale are missing.

5. The *sua sponte* orders of the DNJ denying RICO conspiracy fraud claims against the debt collectors are missing.

6. There is no order from Judge Alper ordering service on Appellants of the *ex parte* emails accepted in 2022 from a potential buyer's attorney Thomas Sullivan, warranting vacatur of all subsequent orders including the forced involuntary sale to Sullivan's clients and theft of $800,000 from the proceeds because no indebtedness statements were ever produced for hearing and no hearing was ordered. ABA Rule 2.9 on Ex parte Communications. Sullivan of Garrity Graham Murphy Garofalo and Flinn of Hanover, New Jersey was caught red-handed in 2022 engaging in ex parte obstruction of justice submitting unilateral emails with orders to Judge Alper in 2022 to schedule immediately a new foreclosure proceeding proscribed by federal law so his customers could get a buyers' deal after the previous deal was breached and died during attorney review.[5]

7. There is no notice of appearance of any attorney representing Appellants because there was none. But orders

[5] This fact is omitted from Appellee's opposition brief.

accepting John Lubenesky as Appellant's attorney after the fact were entered ex parte on the docket in 2023.

MEMORANDUM OF LAW

According to *Brouillette v. CitiMortgage*, 2024 WL 2796529 (Slip Op.), M&T's federal loan servicer duties to the Gurveys included the duty to produce detailed and accurate indebtedness statements through the date of **involuntary forced sale, which was July 6, 2022**. The statements were never produced, however, warranting vacatur of orders under Regulation X of RESPA. 12 CFR 1024.39, 1024.41. Chancery Judge Alper and assignment Judge Venable aided and abetted Appellee M&T and its debt collectors by denying reconsideration based on the Brouillette decision . Instead, they entered a *sua sponte* vexatious litigation order impossible on ten grounds when the Gurveys do not meet the definition, and further defying the Gurvey's constitutional rights to due process by denying the Gurveys the right to challenge the chronology submitted by Appellee and the debt collectors. warranting injunctive relief. *Ex parte Young*, 209 US 123 (1908).

The Gurveys' proper remedy was always to enter the District Court of New Jersey (DNJ) seeking prospective injunctive relief against the chancery judge and its officers which the Gurveys did four times – in 2018, 2020, 2021 and 2023 for ongoing constitutional violations. In 2021, Petitioner sought

prospective injunctive relief also against the chief administrator of the NJ Courts, Glenn A. Grant for promulgating unconstitutional protocols in mortgage actions in violation of Regulation X of RESPA and Judge Wigenton dismissed the motions sua sponte without motions on notice, warranting mandamus orders.

Only [defendant] M&T was a party to the Gurveys' priority 2017 Essex County Law Division action. None of the subsequent district court defendants were previously sued. The damage claims against Reed Smith and Schiller Knapp for Fair Debt Collection Practices Act violations (FDCPA), 15 USC §1692e, wrongful state action with NJ court officers, consumer fraud, attorney in-court fraud and deceit and unprivileged defamation could not be dismissed *sua sponte* without motions on notice. 15 USC §1692e; *Wells Fargo Bank, NA v. St. Louis*, 2024 WL 2737961 (NYAD 2d Dept. 2024); *Slorp v. Lerner, Sampson and Rothfuss*, 587 F. 3d 249 (6th Cir. 2014); *Amalfitano v. Rosenberg*, 12 NY 3d 8; 533 F. 3d 117 (2d Cir. 2017). All these claims and others were upheld for hearing by the Law Division in 2023. Judges Alper and Venable have no power or jurisdiction to vacate those orders.

Further contrary to Appellee's brief, the US Supreme Court is unanimous in holding that no claim preclusion (res judicata) or issue preclusion (collateral estoppel) can be applied to ongoing new acts of mortgage indebtedness fraud, money

laundering crimes and wrongful state action by a loan servicer or debt collector against a pro se homeowner. *Lucky Brand Dungarees v. Marcel Fashions*, 590 US 405, 140 S. Ct. 1589 (2020) Nor can judicial notice be taken of past challenged orders that are not final, were dismissed sua sponte without motions on notice and not on the merits, remain on appeal and are not final. Per the US Supreme Court, in cases of multiple ongoing lawsuits between parties, there is no merger or bar to preclude damage claims for continuing new and unlawful acts. *Lucky Brand Dungarees v. Marcel Fashions*, 590 US 405, 140 S. Ct. 1589 (2020).

Appellant Amy R. Gurvey has been seriously injured from malicious abuse of process, frivolous litigation and unprivileged defamation by Appellees and its debt collectors, having suffered a stroke.

WHEREFORE, Gurvey Appellants pray that the relief sought in their moving brief be granted in all respects with an award of attorneys' fees and costs and that the preclusion order entered by Judge Venable as per se illegal and unconstitutional be vacated.

Dated: April 28, 2025

Dated and submitted:
April 28, 2025

Respectfully,

/s/ H. Scott Gurvey
_____

/s/ Amy R. Weissbrod Gurvey
_____