COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

DOCKET NO. SJC-12859

WESTERN HOUSING COURT, docket #19H79SP000190

Bank Of New York Mellon, f/k/a Bank of New York, as Trustee on Behalf of the Registered Holders of Alternative Loan Trust 2006- J7, Mortgage Pass-Through Certificates, Series 2006-J7, Plaintiff-Appellant,	)
vs.	)
Alton King Jr. and Terri A. Mayes-King, Defendants-Appellees.	)

DEFENDANT-APPELLEE'S MOTION TO RECONSIDER INVOKING RULE 12(b)(1) (THUS ALWAYS TIMELY) AND UNDER STRICTEST JUDICIAL SCRUTINY

NOW COMES Defendant-Appellee Alton King requesting this Honorable Court to reconsider, given lack of subject matter jurisdiction, as purported Plaintiff Trust never owned King's home and had no standing to evict.

> "As a component of subject matter jurisdiction, a party may challenge, or a judge may consider, sua sponte, standing under rule 12 (b) (1) at any time. See Mass. R. Civ. P. 12 (h) (3), 365 Mass. 754 (1974); Maxwell v. AIG Domestic Claims, Inc., 460 Mass. 91, 99-100 (2011)." *Abate v. Fremont Inv. & Loan*, 470 Mass. 821, 828 (2015), affirmed in *Rental Prop. Mgt. Servs. v. Hatcher*, 479 Mass. 542, 547 (2018).

> "*See* Restatement (Second) of Judgments § 11, at 108 (1982) ("A judgment may properly be rendered against a party only if the court has authority to adjudicate the type of controversy involved in the action"). The obvious rationale for this rule is that a court without subject matter jurisdiction over a controversy is without authority to issue a binding judgment regarding that controversy." *Bevilacqua v. Rodriguez*, 460 Mass. 762, 780 (2011).

This Defendant-Appellee, therefore, invokes the requirements of this Court to assess Plaintiff's standing (as necessary in all court actions). Defendant-Appellee also requests a review as to whether this Court, or any of the courts that has heard this case, had subject matter jurisdiction.

Further, the Court's decision thus far in this case has explicitly removed Alton King, and those similarly situated, and only them from the constitutional protections afforded all residents of our state and all other litigants in the Massachusetts courts. Therefore, this Defendant-Appellee invokes review (and reconsideration) of the Court's initial decision at the level of 'strictest judicial scrutiny'.

FACTUAL EVIDENCE APPENDED AND AVAILABLE FOR JUDICIAL NOTICE IN THE PUBLIC RECORD

To clarify the evidence for the Court's required *de novo* review, Defendant-Appellee provides the Court with a verified statement of facts. The factual documentary evidence is appended therewith, as well as a separate

affidavit as to those facts which he recites based on his personal knowledge. He also includes an affidavit from Noah Meister, who did the ministerial task of transferring accurately the specific information from those documents relevant to the statements of facts.

King partially provides this because, in reviewing this material, it became apparent that the Appellant in this case provided an almost completely unusable appendix. From the rules of the court normally imposed upon appellants, King now understands that an appendix is supposed to be numbered pages and include a table of contents that accurately reflects the contents of the appendix; further, that these appendices are supposed to be electronically scannable. None of this was true when the Court reviewed this case. Therefore, he provides this rule-compliant version as service to the Court as a necessary resource, as well as a supplemental appendix[1].

A usable, rule-compliant Appellant Appendix is clearly necessary if the court is to review the actual facts and procedural history of this case.

STANDING ALWAYS TIMELY TO BE RESOLVED; WITHOUT IT, THIS COURT HAD NO SUBJECT MATTER JURISDICTION FOR ITS ORDER

[1] King includes this supplemental appendix of evidence from numerous Public Records for the Court's convenience and to submit affidavits to verify the sources of his statement of facts. He asks the Court too, therefore, accept his conforming Supplemental Appendix.

While Alton King is *pro se* in this matter and does not have the legal learning nor the life experience of the Honorable Benjamin J. Swann, for instance, he therefore incorporates the arguments laid out by his amicuses by reference.

This incorporation by reference includes the arguments as to standing and standard of review necessary for this Court to establish that it had subject matter jurisdiction; these were also necessary so that the lower court established it had subject matter jurisdiction necessary to not have put out a void judgment which it did not do[2]. All of this is laid out in the amicus brief of Sarah McKee.

While King attaches here the raw verified statement of facts, McKee's brief, which he has reviewed and

---

[2] See Chicago, B. & Q. R. Co. v. Chicago, 166 U.S. 226 (1897) that **given the lower court's failing to have established subject matter jurisdiction, this appeal is now King's due process right:** "It is true that this court has said that a trial in a court of justice according to the modes of proceeding applicable to such a case, secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice -- the court having jurisdiction of the subject matter and of the parties, and the defendant having full opportunity to be heard -- met the requirement of due process of law. *United States v. Cruikshank*, 92 U. S. 542, 92 U. S. 554; *Leeper v. Texas*, 139 U. S. 462, 139 U. S. 468."

affirmed the correctness of, reviews evidence overwhelmingly available to this Court. Even if it were omitted from the admittedly unusable Appellant's Appendix, it was available for judicial notice in the public records at the Hampden County Registry of Deeds, the legally reliable Security and Exchange Commission filings available for public access, the Massachusetts Secretary of State's records, the bankruptcy court records as to the purported original 'lender' on the subject loan and its California incorporation papers, and the tax property valuation from the Longmeadow Tax Assessor's Office. McKee's brief includes, then, an analysis of the relevant statutes and legal standing and impact of these documents.

King is now quite aware that the Constitutional protection expressed in great detail in the Indigent Court Costs Law is his birthright; it is the right of all residents of Massachusetts, as this Court held in the *Adjartey v. Central Housing Court*, 481 Mass. 830 (2019) decision:

> "Under the Indigent Court Costs Law, G. L. c. 261, §§ 27A-27G, **indigent parties are able** to obtain waivers or reductions of various fees and costs (**including, for example**, filing fees, fees related to the service of process, and **appeal bond costs**) incurred while litigating a summary process action. See G. L. c. 261, §§ 27A, 27B; Reade v. Secretary of the Commonwealth, 472 Mass. 573, 574 (2015), cert.

> denied, 136 S. Ct. 1729 (2016) (describing Indigent Court Cost Law's "mechanism for indigent persons to obtain waivers or reductions of court fees and other costs"). The Indigent Court Costs Law exists to "ensur[e] that the doors of the Commonwealth's courts will not be closed to the poor." Reade, supra. **The equitable and consistent application of this law is therefore critically important to safeguarding every Massachusetts litigant's ability to "obtain right and justice freely, and without being obliged to purchase it." [Note 14] Art. 11 of the Massachusetts Declaration of Rights." [emphasis added]**

The Law and established jurisprudence are that *every Massachusetts litigant,* including King *is able to … obtain right and justice freely.* A court is authorized to make whatever order is necessary (MGL Chapter 261 §27D) and it is to "liberally interpreted" to meet that purpose for King and all indigent litigants (See *Reade*)

The recent *Adjartey* decision is the standing law and has been widely affirmatively cited even though only a little over a year old.

The Adjartey decision also held, apparently, in accord with the explicit language of the Indigent Court Costs Laws that all litigants in 'Massachusetts courts, including Alton King, has his Constitutional protections to access court, not have to "purchase" "justice", (Article XI) especially to defend himself (Articles I and XII). King explicitly invokes those rights now applicable to him and all of those similarly situated.

Those rights which all courts have the power and obligation to "consistently" apply to ensure King and all others Constitutional access to our courts include "The clear language of the statute vests the court with the power to grant a "waiver, substitution or payment by the commonwealth" … G. L. c. 261, s. 27B."

Adjartey also held in accordance with law apparently almost two hundred years old that only a "title holder" after a purported foreclosure could even commence an eviction case[3]. King had correctly, from the commencement of the case, (see Answer, Western Housing Court SupAp98) challenged the Defendant with a challenge to a plaintiff's title - traditional in these cases[4]. This Court acknowledges that King's evidence of a *Pinti* violation of the Plaintiff's purported Right to Cure letter is "apparent" to it. This meant it had "both the

---

[3] King here incorporates by reference the history of the "Landlords and Tenants" Law laid out at length in Amicus Grace Ross' brief to be filed very very shortly after this motion.

[4] See authorization in original language of Chapter 89 of the Acts of 1825 "Act providing further remedies for Landlords and Tenants": "when the defendant, in any such action,
shall plead the title of himself, or any other person, to the freehold of such demanded premises in justification, the Court shall thereon order the defendant t… to enterthe said action at the next Court of Common Pleas". The right to such a title-challenge by a defendant was affirmed in 2011 *Bank of New York, trustee, v. Bailey*, 460 Mass.(2011)

power and obligation" to assess it the foreclosure was void and thus Plaintiff is not a "title holder" nor "owner" and therefore lacked standing[5].

Even if this Court could find that the Plaintiff was already the legally recognized "title holder" before it commenced the eviction case, had standing and that the Court had subject matter jurisdiction and that the inapplicable statute, MGL Chap. 239 §5, could be invoked to require rental payments to a nonexistent securitized trust as a plaintiff after a void foreclosure, those payments under statute are the state's obligation to pay if the imposition of such an order denies King his access to the courts' protections of his Constitutional rights.

King invokes the Indigent Court Costs law and the history of the separate purpose of chapter 239 §6. The

---

[5] *Rental Property Management Services v. Hatcher,* 479 Mass. 542, 546-47 (2018)" "In addition, whenever a problem of subject matter jurisdiction becomes apparent to a court, the court has "both the power and the obligation" to resolve it, "regardless [of] whether the issue is raised by the parties." *Id.*, quoting Nature Church v. Assessors of Belchertown, 384 Mass. 811, 812, 429 N.E.2d 329 (1981). See Mass. R. Civ. P. 12 (h) (3), 365 Mass. 754 (1974) ("Whenever it appears by suggestion of a party or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action" [emphasis added]). "Subject matter jurisdiction cannot be conferred by consent, conduct or waiver." Litton Business Sys., Inc. v. Commissioner of Revenue, 383 Mass. 619, 622, 420."

law protects him to having to pay unaffordable court-ordered payments; nor can the Court order him to lose his right to defense of putting title 'in issue' by making him pay 'rent' and establish that Plaintiff has his title and is his landlord[6]. §6 always had separate appeal bond procedures from when first passed in 1979 from those for appeals of "classic" Landlords and Tenants, now §5 of chapter 239[7].

Therefore, the correct comparison by the Court is of the actual legislative language and the order of enactment of the relevant statutes as to waiving fees including appeal bonds and periodic rent payments when legally indigent. See the Honorable Swann's amicus and

---

[6] See Staples v. Collins, 321 Mass. 449, (1947) which even in this decision the Court recognize showed that acceptance of a rent payment established tenancy. See even stronger wording in *Warren v. James*, 130 Mass. 540, 541 (1881), the first SJC interpretation of the 1879 law that would become Chpater §6. Further discussion in the Ross Amicus and the estoppel argument from Adjartey Amicus, incorporated by reference here.

[7] See history or the two statutes from Grace Ross' Amicus brief, incorporated here by reference. See also, Swan's amicus as to the two separate "mischiefs" for which both laws were passed and there explicit legislative wording making one not applicable to the other. The Ross Amicus also points out that the first SJC decision in 1881, Warren v. James, clarified that th eLandlords and Tenants law was only being authorized for post-foreclosure purchasers in the limited instance where their title was undisputed by the Defendant or the Defendant could not have legally disputed it.

also the amicus briefs of his fellow homeowners: Deirdre Dundon and Gale Lutz-Henrickson.

As to the many statutes that the courts should review as applicable to the violations of his rights in this case, Defendant-Appellee points again to, and incorporates by reference, the litany of laws laid out by the Honorable Swann. The Constitutional requirement to have a right to bring a case ("standing") has yet to be assessed as to Summary Process in this case. King requests it now.

ONCE TARGET AS PART OF A GOVERNMENT DEFINED CLASS, POSSIBLE VIOLATION OF KING'S RIGHTS REQUIRES STRICTEST JUDICIAL SCRUTINY

As a separate matter, this decision clearly separates and excludes King, and those similarly situated, from several constitutional protections by identifying them as 'suspect class'[8].

---

[8] "Suspect" meaning legally they are suspected of being a "class" by being grouped together by the Government for different - worse - treatment. See Commonwealth v. King, 374 Mass. 5, 20 (1977), quoting Oyler v. Boles, 368 U.S. 448, 456 (1962). See Pariseau v. Brockton, 135 F. Supp. 2d 257, 263 (D. Mass. 2001), quoting Hayden v. Grayson, 134 F.3d 449, 453 n.3 (1st Cir. 1998) (stating that "the Equal Protection Clause safeguards not merely against invidious classifications such as race, but also against `any arbitrary classification of persons for unfavorable governmental treatment'"). Therefore, "judicial scrutiny is necessary to protect individuals from prosecution based on arbitrary or otherwise impermissible classification." Commonwealth v. Bernardo B., supra at 168.

By separating King and those similarly situated from universal Constitutional protections, this Court, as a governmental body, has separated them out for "unfavorable governmental treatment". This Court has not even argued an "overriding" or "compelling" government interest for denying them.

In fact, it is unclear what "governmental interest" the Court could invoke for specifically denying them the life-saving protections of the Eviction and Foreclosure Moratorium, Chap. 65 of the Acts of 2020. What governmental purpose could be met by serving King and those similarly situated up to the potential sacrifice of their lives in violation of the legislature's explicit law making and the governor's execution and enforcement of that law? Why deny them the protection of being able to be safe in their home so that they are uniquely made vulnerable and put in death's way? What rational reasoning can this Court offer for not just its "unfavorable" but death-inviting holding[9]?

Further, in accordance with Swann's brief, King invokes his Constitutional rights under Article XXX of

[9] The Court's June 3rd letter recognized that people of color such as King are much mor elikely to die from COVID - given that, why carve him and those like him out from protection of the Law?

the Massachusetts Declaration of Rights, that this Court not put itself in the shoes of the legislature, in violation of the separation of powers and edit words out of our laws - or literally re-write their meaning[10]., and his rights under Article X that he and those similarly situated "are not controllable by any other laws than those to which their constitutional representative body have given their consent.". See, again, the Swan and Ross Amicus briefs.

Again, there is already a statutory resolution here: the Indigent Court Costs Law, in terms of any court order including rent, guarantees that the government will cover it rather than deny an indigent

---

[10] The erased the wording in Chapter 239 §5(c) that the legislature wrote saying the §5 Appeal Bond waiver provisions do not apply in §6 cases. It erased the wording at the beginning of §6, that a Plaintiff had to already have title to the property (exactly what this same Court held in Adjartey - that after a purported foreclosure the Plaintiff had to be title holder). It erased that King was protected under th eeviction moratorium by erasing the legislative wording of case "commenced before" the COVID order and the wording that a Court with eviction subject matter jurisdiction could not continue a case of a "non-essential" eviction which explicitly includes post-foreclosure. It re-wrote the long-settled meaning of "rent" - only applicable where a Plaintiff was the established owner *and if paid by an occupant such as King creates a tenancy*. It re-wrote Chapter 239 §5(e) which says being order to pay a sustitute rent when an appeal bond is waived can apply to §6 cases when the explicit wording is that it only applies to §5(c) appeal bonds - the very paragraph which explicitly said it did not apply to §6 cases.

litigant there Constitutional Court rights. Therefore, the Court, if it could find a compelling government purpose to render a curve out from Constitutional protections for a 'class', has not followed the caselaw that it provide the "narrowest" resolution, which is to use the existing statute to pay for this rent need by the Plaintiff so that Alton King can go forward with his court case.

The carve out of King and those similarly situated is compounded by the existing, structurally racist acts of the mortgage lending industry, which the Court has refused to reconcile in this case. This exclusion from constitutional protections was imposed upon those whose rights have already been violated and who have been separated out for denial of protection against those violations by this Court's decision. These litigants denied their constitutional rights and protections are disproportionately people of color. Defendant-Appellee King incorporates by reference the amicus brief the well-respected social science researcher James Jennings and the anticipated brief from the North East Area conference of the NAACP. These provide ample evidence of the structurally racist practices of the industry of which purported Plaintiff is a part - the hundred years

history of that structural racism, its modern iteration and the ensuing damage. This includes likelihood of greater damage and death from COVID-19.

Given the above, the Court's decision to remove Alton King and those similarly situated from multiple Constitutional protections (see litany in Ross *amicus* brief to follow shortly), the violations appear to run afoul of the Fifth Amendment Due Process and Fourteenth Amendment Equal Protection Amendments of the U.S. Constitution and the comparable ones of the Massachusetts Constitution. As such, the Court has created the requirements for any review now of Alton King's rights to require "strictest judicial scrutiny.[11]"

See Commonwealth v. King, 374 Mass. 5, 20 (1977):

> "The classifications set forth in art. 106, supra, with the exception of sex, are within the extensive protection of the Fourteenth Amendment to the United States Constitution and are subjected to the strictest judicial scrutiny. See, e.g., Loving v. Virginia, 388 U.S. 1 (1967) (race as a suspect classification); Graham v. Richardson, 403 U.S. 365 (1971) (alienage as a suspect classification); Oyama v. California, 332 U.S. 633 (1948) (national origin as a suspect classification); Wisconsin v. Yoder, 406 U.S. 205, 214 (1972) (religious distinction affecting fundamental First Amendment rights). These classifications are permissible only if they further a demonstrably compelling interest and limit their

[11] For further analysis of the applicability of the strictest judicial scrutiny standard given violations of the 14th amendment and 5th amendment due process violations, King incorporates the analysis by reference by *pro se* amicus Grace C. Ross.

impact as narrowly as possible consistent with their legitimate purpose. See, e.g., Commonwealth v. Henry's Drywall Co., 366 Mass. 539 , 542 (1974); In re Griffiths, 413 U.S. 717, 721-722 (1973)."

CONCLUSION

For these reasons, King invokes the always timely right that this Court review the evidence at the applicable standards (See McKee amicus) to establish that in no way was Plaintiff's foreclosure demonstratably void by operation of law, that it had title and ownership pre-commencing an eviction case and therefore this Court has subject matter jurisdiction to even make this holding in his case. That it enforce all the wording, and in accordance with legislative history, of our statutes and not violate his rights by attempting to act as our legislature. That it, therefore, recognize that he (all those similarly situated) are indeed covered like all other Massachusetts residents by our Constitution and the Indigent Court Costs law. And that having carved King and others similarly situated out as a 'suspect' class that it not allow itself to be the handmaid of a recognized structurally racist industry and, as required, review this decision at the highest level of review and reconsideration - that of "strictest judicial scrutiny".

Respectfully submitted,

Alton King, Defendant-Appellee
49 Memery Lane
Longmeadow, MA 01106
Alkingjr2@comcast.net

Date: September 11, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished on September 11, 2020 by E-Service and email upon the following:

WESTERN HOUSING COURT, docket #19H79SP000190

PLAINTIFF-APPELLANT
℅ Carl E. Fumarola
Christine Kingston
Nelson Mullings Riley & Scarborough, LLP
One Post Office Square, 30th Floor
Boston, MA 02109
carl.fumarola@nelsonmullins.com
christine.kingston@nelsonmullins.com

℅ Ryan O'Hara
33 State Street
Springfield, MA 01103
rohara@baconwilson.com

Amicuses:
Ruth Adjartey
Deirdre Dundon
Gale Lutz-Henrickson
Zakiya Alake & Dawn Duncan
James Jennings
Benjamin J. Swan, Sr.

Alton King, Defendant-Appellee
49 Memery Lane
Longmeadow, MA 01106
Alkingjr2@comcast.net

Date: Septmeber 11, 2020

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

DOCKET NO. SJC-12859

WESTERN HOUSING COURT, docket #19H79SP000190

Bank Of New York Mellon, f/k/a Bank of New York, as Trustee on Behalf of the Registered Holders of Alternative Loan Trust 2006- J7, Mortgage Pass-Through Certificates, Series 2006-J7, Plaintiff-Appellant,	)
vs.	)
Alton King Jr. and Terri A. Mayes-King, Defendants-Appellees.	)

DEFENDANT-APPELLEE VERIFIED STATEMENT OF FACTS

1. In 2006, Alton King, Jr., and Terri Mayes-King borrowed in order to build an addition on their home.[1]
2. The addition was to include an apartment that the Kings could rent out, so that the income would help to repay the loan.
3. On August 8, 2006, Alton King purportedly obtained a package of mortgage loans for his property at 49 Memery Lane, Longmeadow, Massachusetts 01106 ("the Property").
4. Mr. King signed the purported mortgage contracts on August 8, 2006. The document titled "Mortgage" for $1,000,000 is recorded in the Hampden Registry of Deeds, Book # 16119, Page # 3 ("the First Mortgage"). A copy can be found in the AppI, p. 39. The second,

[1] Supplemental Appendix ("SupAp") p.129, King's Affidavit

for $411,000 is recorded in the Hampden Registry of Deeds, Book # 16119, Page # 22 ("the Second Mortgage"). A copy can be found at the SupApI, p. 3.

5. The terms of these loans were never fully explained to Alton King.
6. Although Alton King signed two documents entitled Mortgage, the Lender's representative assured him that the loan's being split into two mortgages would make no difference, and that the two mortgages would be combined, in six months, when King's renovation project was completed.
7. The Mortgage Originator was named as ComUnity Lending, Inc., of California.
8. Alton King provided the broker with his financial documents and was assured that he could afford the loan.
9. Orally at the closing, and on the phone, Broker Smith assured Alton King repeatedly that they would be able to refinance out of the loan into a more standard mortgage in one year.
10. Alton King was concerned about the viability of the terms of the loan, but put those concerns aside with Smith's reassurances about his ability to refinance. See paragraph 7, above.
11. The First Mortgage was for $1,000,000. AppI, p. 39. At closing, King was told the appraisal of the home was for $1,500,000.
12. But according to tax bills of Longmeadow, for 2006, the assessed value of the property was $1,060,300; for year 2007, $1,183,200; for year 2008, $1,128,800; for year 2009, $1,051,600. Alton King obtained this

information by calling the Longmeadow Board of Assessors on July 10 of 2020.

13. The Mortgage Lender for the first Mortgage was named as ComUnity Lending, Inc., of California. AppI, p. 39.

14. The MERS assignment states that Mortgage Electronic Registration Systems, Inc., "as nominee For ComUnity Lending Incorporated, its successors and assigns," purports to assign not the alleged $1,000,000 mortgage, but "all interest under that certain Mortgage," to Bank of New York Mellon, as trustee. The purported Assignment does not reference any signatory authority. The Assignment purportedly was made "For value received," but no price is listed. AppI, p. 89.

15. ComUnity Lending, Inc., registered as a California Corp on July 3rd, 1980. See ComUnity Lending, Inc., Foreign Corporation Certificate, SupApI, p. 37.

16. ComUnity Lending, Inc., withdrew its foreign corporation certificate in the Commonwealth of Massachusetts on November 21, 2007. SupApI, p. 42.

17. "In a title theory state like Massachusetts, a mortgage is a transfer of legal title in a property to secure a debt. *See Faneuil Investors Group, Ltd. Partnership v. Selectmen of Dennis*, 458 Mass. 1, 6 (2010); *U.S. Bank Nat'l Ass'n, trustee v. Ibanez*, 458 Mass. 637, 649 (2011).

18. ComUnity Lending, Inc., a California corporation, is a corporation foreign to Massachusetts. G.L. c. 156D, § 15.01. AUTHORITY TO TRANSACT BUSINESS REQUIRED provides:

> (a) A foreign corporation that transacts business or has a usual place of business in

> the commonwealth shall deliver the certificate required by section 15.03 to the secretary of state for filing.
> (b) The following activities, among others, do constitute transacting business within the meaning of subsection (a):
> (1) the ownership or leasing of real estate in the commonwealth;....[Emphasis added.]

Subprime Loans

19. The Massachusetts Supreme Judicial Court has held that loans with certain characteristics are presumptively and structurally unfair. *Commonwealth v. Fremont Investment & Loan,* 897 N.E.2d 548, 554 (2008) (holding that Fremont's actions "in originating loans with terms that in combination would lead predictably to the consequence of the borrower's default and foreclosure" were a violation of G.L. c. 93A, § 2). These characteristics are 1) an ARM loan with an introductory rate period of three years or less; 2) the introductory rate for the initial period was 3 percent below the fully indexed rate; 3) the debt-to-income ratio of the monthly payments due at the fully indexed rate were more than 50 percent of the borrower's monthly income; 4) the loan to value ratio was 100 percent. *Id.*
20. In the Appellant's Brief filing by Alton King, Jr., in *Bank of New York Mellon v. Alton King, Jr.*, details about the initial purported mortgage agreement and the

effects of its terms are described succinctly at pages 11 - 12:

> "The Mortgage Loan terms included an initial teaser interest rate of 1%, which adjusted on October 1, 2006 — less than two months after closing and prior to the first actual mortgage payment date - by adding 4.150% to the Index, which was defined as the "monthly weighted average cost of savings, borrowings and advances of members of the Federal Home Loan Bank of San Francisco". Oddly, the actual first payment date of the Mortgage Loan was October 1, 2006, so the teaser rate was beyond a teaser, it was an incredible misrepresentation as that rate was never applied to an actual mortgage payment "made by King. Although the interest rate could adjust immediately up to a rate of 9.95% (APPI P.157, para 2(D)), the first year payments were based on the misrepresented teaser rate of 1%, causing monthly payments to be insufficient to cover interest — resulting in negative amortization where the principal balance increased. The interest rate changed monthly but the payment only changed every 12 months and because the loan terms included a maximum payment increase of 7.5% on each subsequent yearly payment change, the monthly loan payment remained low and affordable but intentionally caused the principal to increase each year until the principal balance increased to 115% of the original loan amount — the full appraised value. At that point, the loan of $1,150,000.00 would automatically reset over the remaining term of the loan according to the then adjustable rate, which caused incredible payment shock as the payment could potentially cause an increase of the initial monthly rate of $3,216.40 to well over $10,000/month[2]. The Mortgage Loan was doomed for failure and that it did, requiring a modification executed on December 30, 2010 (AppI p.100)("MOD"), evidencing a principal balance that had ballooned to $1,249,601.17 as contemplated by this predatory loan product. Even though King was record title holder and borrower on the Mortgage,

[2] See Transcript from Summary Judgment Hearing where King asserted that the payment reset to $13,000/month (AppI p.194).

> BAC Home Loans Servicing, LP, the alleged "Lender" at the time, did not cause King to execute said recorded MOD, which evidences a new agreement between Terri and the Lender, which King never agreed to nor was subject to. Instead of extending the maturity date, the MOD solely extended the amortization schedule, which would require a balloon payment at the time of maturity. Notwithstanding, the MOD failed to disclose the necessary balloon payment terms."

21. Early in 2010, Alton King contacted the loan servicer for help because it was becoming increasingly difficult for him to meet his mortgage loan obligations.

22. In response to his inquiries, an agent of the party billing him told Mr. King that he should stop making his mortgage payments; even though by doing so he would fall behind on his mortgage. The loan servicer informed Mr. King that by ceasing payments, Mr. King would become eligible for one of the programs offered to distressed homeowners.

23. On December 30, 2010, Alton King received a Loan Modification Agreement from BAC Home Loan Servicing, LP, recorded at the Hampden County Registry of Deeds at Book 18732, Page 595. AppI, p. 79.

24. In this purported loan modification, BAC Home Loan Servicing, LP, described itself as the "Lender." AppI, p. 79. The modification decreased King's monthly mortgage payments to $4,618.77 per month. AppI, p. 79. The payments were nonetheless to end as of September 1, 2036, the end date of the original First Mortgage. AppI, p. 79. If King made all payments, this would leave an estimated balloon payment at the end of $238,329.45. The modification only applied to the First Mortgage. AppI, p. 79.

25. Terri Mayes-King alone signed this loan modification agreement with only one party, BAC Home Loan Servicing, LP. AppI, p. 79.
26. BAC Home Loan Servicing, LP, does not appear in any chain of endorsement to the Note, is not claimed by any party to every have been in any chain of Note-owner and its being note-owner on the date of execution of this document invalidates Plaintiff claim to Noteownership.
27. When this loan modification was negotiated, King was told it was to cover both mortgage loans, but a month later he found out it covered only one.

Assignment

28. On December 28, 2017, a purported "Corporate Assignment of Mortgage" was filed at the Hampden County Registry of Deeds at Book 22007, Page 229 ("the MERS Assignment"). A copy of this assignment can be found at AppI, p. 89.
29. On May 13th, 2008, ComUnity Lending, Inc., informed the California Secretary of State that it had declared Chapter 11 bankruptcy. ComUnity Lending, Inc.'s Statement of Information, attached at SupApI, p. 75.
30. The only evidence of transfer of the associated mortgage Note is a photocopy of what appear to be the signature page of this purported mortgage Note, consisting of two single-sided copies, one apparently of the front and one apparently of the back, of Alton King's supposed mortgage Note for the First Mortgage. AppI, pp. 139 - 140.
31. The Pooling and Servicing Agreement (PSA) requires that within the 90 days from the closing date, the trustee must delivery, "a Final Certification with

respect to the Initial Mortgage Loans." See PSA, Section 2.01, Conveyance of Mortgage Loans, SupApI, p. 74.

32. Any mortgage loan, other than an initial loan transfer before the closing date, transferred to the trust requires a Supplemental Transfer Agreement "executed and delivered by the related Seller or Sellers, the Master Servicer, the Depositor and the Trustee." SupApI, pp. 77 – 78.

Default, Right to Cure

33. On June 29, 2017, SPS Select Portfolio Servicing Inc., supposedly sent a "150 Day Right to Cure Your Mortgage Default" ("Right to Cure letter") letter to Alton King. A copy of this purported Right to Cure Letter was included as an exhibit in the Record Appendix, Volume I, in *Bank of New York Mellon v. Alton King and Terri A. Mayes-King* No. SJC-12859, and can be found at AppI, p. 145.

34. M.G.L. c. 244, § 35A, the "Right to Cure" law, was passed in 2007, and became effective May 1, 2008. It provides that at the end of the Right to Cure period, the mortgagee is to file a copy of the "Right to Cure" letter and an affidavit swearing to compliance with the law concurrently with the Lender's Active Military Service filing in Land Court, for the Servicemembers' Civil Relief Act proceeding to determine whether that Act protects the borrower temporarily from foreclosure.

35. The statutory power of sale, M.G.L. c. 244, § 14, refers to the mortgage section (Paragraph 22 of the standard mortgage form) that is used to authorize a

foreclosure of the property by auction sale. Paragraph 22 of King's mortgage states:

> "Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise), The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which tile default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. **The notice shall further Inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to the acceleration and sale.**" AppI, p. 59 [emphasis added].

36. A copy of this purported Right to Cure letter was filed on February 20, 2018, along with the purported trust's Land Court case, Docket 18 SM 001124, for a determination of whether the Servicemembers' Civil Relief Act (SCRA) gave King temporary protection from foreclosure.

37. The copy of the Right to Cure letter filed in Land Court identifies the Bank of New York Mellon, f/k/a the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7, as

the mortgagee on the date the letter was purportedly sent to King, that is, June 29, 2017. Appellant Appendix. I, p. 147.

38. As of February 29, 2017, however, the mortgage holder of record in the Hampden Registry of Deeds was actually MERS, according to the First Mortgage and its purported Assignment of Mortgage. AppI, p. 39; AppI, p. 89.

Foreclosure Process and Sale

39. King does not remember receive a mailing from the Orlans, PC, law firm, which claimed to be the Notice of Sale. The record shows a copy of the advertising that does not list the auctioneer's name or license number. AppI, p. 105.

40. At no time was Alton King provided with the legally required recitation of the "chain of title and ownership of the note." Given that Alton King did not receive the legally required Notice of the scheduled auction, any purported auction was without force and effect, a legal "nullity."

41. On February 16th, 2018, Bank of New York Mellon, f/k/a The Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7, filed an Active Military Service notice in Land Court. SupApI, p. 83. The mortgagee of record at the time, however, was MERS.

42. On August 24, 2018, Bank of New York Mellon, f/k/a the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7,

Mortgage Pass-Through Certificates, Series 2006-J7, had a purported foreclosure auction conducted on the premises of 49 Memery Lane in Longmeadow, Massachusetts, and supposedly sold King's home to itself, that is, Bank of New York Mellon, f/k/a the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7, for "One Million Two Hundred Eighty-Two Thousand Sixty-Eight Dollars and 91/100 ($1,282,068.91) paid." AppI, p. 103.

43. Alton King was present at the purported foreclosure auction on August 24, 2018, and witnessed the proceedings. He witnessed two people apparently there for the purported securitized trust, along with a few bidders, but the purported trust's bid was so high that no one else bid.

44. On October 16, 2018, a purported Foreclosure Deed was recorded at Hampden Registry of Deeds, Book 22404, page 6, recorded by Bank of New York Mellon, f/k/a the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 and/or its agent. It is dated October 4th, 2018. AppI, p. 101.

45. Along with the purported Foreclosure Deed, Bank of New York Mellon, f/k/a The Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 had a document entitled an Affidavit of Sale recorded in the Hampden Registry of Deeds at Book 22404, Page 7. This document is

purportedly signed by a Jamie Welch, Esq., on behalf of Orlans, PC, and lists numerous purported facts, including actions at the auction itself. AppI, p. 103.

46. On October 16, 2018, a purported Certificate of Entry, dated August 24, 2018, listing James R. Jasmin as having entered the property on behalf of the purported mortgage holder for the purpose of foreclosure by entry, was recorded in the Hampden County Registry of Deeds at Book 22404, Page 4. SupApI, p. 85.

47. According to the Affidavit of Sale recorded on October 16, 2018, a notice of this foreclosure sale had been published in the Springfield Union News-Republican on "the 3rd day of August, 2018, on the 10th day of August, 2018 and on the 17th day of August, 2018," including the Terms of Sale as follows: *"TERMS OF SALE: A deposit of FIVE THOUSAND DOLLARS AND 00 CENTS ($5,000.00) In the form of a certified check, bank treasurer's check or money order will be required to be delivered at or before the time the bid is offered. The successful bidder will be required to execute a Foreclosure Sale Agreement immediately after the close of the bidding. The balance of the purchase price shall be paid within thirty (30) days from the sale date in the form of a certified check, bank treasurer's check or other check satisfactory to Mortgagee's attorney. The Mortgagee reserves the right to bid at the sale, to reject any and all bids, to continue the sale and to amend the terms of the sale by written or oral announcement made before or during the foreclosure sale."* AppI, p. 103.

48. The Affidavit of Sale further states: "This office has complied with Chapter 244, Section 14 of Massachusetts General Laws, as amended, by mailing the required notices by certified mail, return receipt requested." AppI, p. 103.

49. In addition, the affiant in the Affidavit of Sale avers: "Pursuant to said notice at the time and place therein appointed, the Lender sold the mortgaged premises at public auction by Susan J. Jasmin, a licensed auctioneer, of Towne Auction Company LLC, to the highest bidder The Bank of New York Mellon, f/k/a, The Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7, with an address of c/o Select Portfolio Servicing, Inc., 3217 S. Decker Lake Dr, Salt Lake City, UT 84119, the sum of ONE MILLION TWO HUNDRED EIGHTY-TWO THOUSAND SIXTY-EIGHT DOLLARS AND 91/100 ($1,282,068.19) paid, being the highest bid made therefor at said auction." As indicated, this Affidavit was executed by Jamie Welch, Esq., Employee, Authorized Signatory, Real Property, of Orlans, PC. AppI, p. 103.

50. The recorded Certificate of Entry, dated August 24, 2018, states:

"[The signatories] were present and saw James R. Jasmin, an agent of Orlans PC, duly authorized by Bank of New York Mellon, f/k/the Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7 . . .
. . . make an open, peaceable and unopposed entry on the premises for the purpose … then declared, of foreclosing said mortgage for breach of condition thereof." SupApI, p. 85.

51. A Certificate of Appointment for James R. Jasmin was signed on October 15, 2018, and recorded on October 16, 2018, nearly two months after the purported foreclosure, at Book 22404, Page 5, in the Hampden Registry of Deeds. SupApI, p. 86.
52. The Certificate of Appointment states, in part, that "Orlans PC, acting under a Power of Attorney for The Bank of New York Mellon, f/k/a, The Bank of New York, as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006-J7, … "constitutes and appoints. . . as its agent" James R. Jasmin, on behalf of Orlans, PC, to "make entry onto the premises located at 49 Memery Lane, Longmeadow, MA 01106. . . for the purpose of foreclosing said mortgage for breach of the conditions thereof." SupApI, p. 86.
53. The Auctioneer named in the Affidavit of Sale was Susan J. Jasmin. AppI, p. 103. Neither the Auctioneer's name nor her license number appear in the copy of the newspaper ad tear sheet attached to the Foreclosure Deed recorded at Book 22404, Page 8, in the Hampden Registry of Deeds. AppI, p. 105.
54. The Certificate of Entry lists as Witness 1, Angel Della Ripa, and as Witness 2, Harold W. Murphy, swearing under oath that the entry was unopposed, and swearing that Susan J. Jasmin was the "duly authorized representative" of the bank. SupApI, p. 85.
55. The Notary on the Certificate of Entry was also Susan J. Jasmin, who is the named Auctioneer. SupApI, p. 85.
56. In the document titled "Affidavit of Sale" attached to the purported Foreclosure Deed, Jamie Welch, as the Employee and Authorized Signatory of Orlans PC, avers

that they "caused to be published" the advertisement of the auction on the 3rd day of August, 2018, on the 10th day of August, 2018, and on the 17th day of August, 2018 in the Republican. He also swears that Orlans PC complied with the requirements of MGL Chapter 244, § 14, the core foreclosure by sale statute, sending notification to King via certified mail. AppI, p. 103.

57. The copy of the legal advertisement included in the Foreclosure Deed fails to identify the auctioneer or the auctioneer's license number. AppI, p. 105.

58. A purported copy of the Alton King's first mortgage note is at AppI, p. 136.

59. The fourth and fifth pages of this purported copy of the Note appear to be the signature page, consisting of two single-sided copies, one apparently of the front and one apparently of the back of the same page. AppI, pp. 139 - 140.

60. Terri Mayes-King's signature is on the front of this page. AppI, p. 139. It is the only signature on this page. On the upper right part of this page, a bleed through is visible. On the bottom of this page, two apparent bleed throughs are visible, one beside the other. AppI, p. 139.

61. These bleed throughs appear to be from the ink of three separate rubber stamped endorsements affixed to the back of the page. These are visible on the following page AppI, p. 140. Page 5 of this purported note copy (that is, AppI, p. 140), however, appears to have been put in the record with the bottom of the page at the top, so that the two stamp images that bleed through from the front page, with Terri Mayes-King's signature, are at the top of AppI, p. 140.

Given this copying, if they were one page at one time, they evidently, based on this copying, are being stored as unaffixed separate pages.

62. The initial stamp on the back of fourth page of the purported note appears upside down at the bottom of the page. AppI, p. 140. This stamp purports to be an endorsement from a "Danielle Friberg, Mortgage Master, ComUnity Lending, Incorporated, a California Corporation, Without Recourse, to the order of Countrywide Bank, N.A". The image of the stamp is badly degraded. An apparent though illegible signature, in markedly darker ink, is made over the words 'without recourse,' indicating that this is a copy of an actual wet-ink signature, and not part of the stamp.

63. The stamps for both of the other two purported Note endorsements appear at the top of the current copy of this page. AppI, p. 140. These include purported signatures as part of the respective stamps: the "signatures" fit almost completely within their signature areas. On the first of these later endorsements, just a little tail on the 'j' of Michele Sjolander's "signature" scarcely loops over the signature line. The second of these later endorsements is from Countrywide Bank, N.A., by a Jose Juarez, Collateral Processing Officer, without recourse to Countrywide Home Loans, Inc. Both purported signatures appear to be degraded essentially to the same degree as the endorsement wording and bled through like the rest of the stamps.

64. The apparent signature of Danielle Friberg, the initial endorsement, appears to be a copy of the only

genuine signature on this page. The Uniform Commercial Code requires signatures on a negotiable instrument, such as a Note, to be made "manually or by means of a device or machine . . ." *See* UCC §3-401; cf. G.L. c. 106, § 4.01. The two remaining purported signatures appear not to have been made manually or by a machine, but by rubber stamps.

65. AppI, pp. 136 – 140 are copies of pages from the purportedly original Note on which two faint markings can be seen at the top of each page. These appear to be images of holes a document put into a traditional two-ring bank notebook would have.

66. The purported endorsement page at AppI, p. 140 however (purportedly a copy of the back of page 4 of the Note) seems not to have any markings where holes for a two-ring bank note book would have been. Therefore, it is not clear that this is actually a copy of the page that it is alleged to be, or that it was ever in reality the back of the 4th page of the original, wet-ink Note.

67. In September of 2018, King received a purported "Notice to Quit" from David A. Marsocci, Esquire, of Dolan Connly, PC. SupApI, p. 87.

68. The Notice to Quit to King explicitly distinguishes rent from use and occupancy. "All payment accepted subsequent to the date of this Notice are accepted **for use and occupancy only and not as rent**. The acceptance of said payment will not in any way create a new tenancy." SupApI, p. 88 [Emphasis in the original].

Plaintiff Purported Trust's Pooling and Servicing Agreement

69. In his Answer to the purported trust's Complaint filed in the Western Housing Court, Docket No. 19SP190, King stated: "The landlord does not have superior right to possess and/or does not have standing to bring this action." SupApI, p. 98.
70. King further substantiated this point by saying: "The landlord's case should be dismissed because they did not comply with paragraph 22 of my mortgage and the foreclosure resulted from the bank's improper approval of repairs that caused damage to my house." SupApI, p. 98.
71. In his answer, King also stated that the foreclosure did not comply with the mortgage contract, the foreclosure did not comply with the statutory and regulator requirements and that the relevant note was not legally transferred to the foreclosing entity. SupApI, p. 103. King stated "I have other defenses or counterclaims as follows: failure to make a good faith effort to avoid foreclose," and requested that the Court dismiss the Complaint against him because, again, the purported trust Plaintiff did not have "a superior right to possession of the property and the foreclosure is void." SupApI, p. 104.
72. The full text of the Plaintiff Trust's unredacted Pooling and Servicing Agreement ("PSA") is on the public record in the EDGAR database of the U.S. Securities and Exchange Commission.[3]
73. The first page of the PSA says, "EXECUTION COPY." SupApI, p. 60.

[3]https://www.sec.gov/Archives/edgar/data/1377865/000090514806006722/efc6-2711_5971949ex991.txt.

74. The parties listed on the cover page of the PSA are CWALT, Inc., Depositor; Countrywide Home Loans, Inc., Seller; Park Granada LLC, Seller; Park Monaco Inc., Seller; Countrywide Home Loans Servicing LP, Master Servicer; and Bank of New York, Trustee. SupApI, p. 60.

75. At the end of the PSA, and before the Schedules, Section XI-6 states: "IN WITNESS THEREOF, the Depositor, the Trustee, the Sellers and the Master Servicer have caused their names to be signed hereto by their respective officers duly authorized as of the day and year written above." This is followed by a typed list of the parties, with the name of each "to be signed hereto" indicated only by the typed name preceded by /s/. For instance:

"CWALT, Inc.

as Depositor

By: /s/ Michael Schloessmann

Name: Michael Schloessmann

Title: Vice President

THE BANK OF NEW YORK,

as Trustee

By: /s/ Maria Tokarz

Name: Maria Tokarz

Title: Assistant Vice President"

76. To be conveyed into a securitized trust, a mortgage loan is purchased and transferred to a Seller, which sells and transfers it to the Depositor, which has a license from the SEC to transfer such mortgage loans into such trusts. Thus, there must be a complete chain of title of the mortgage and complete chain of transfers of the Note, ending in both cases in the trust. Here, however, there is no assignment of King's First Mortgage to the Depositor, nor from Depositor to the purported Trust.
77. The PSA's list of Schedules starts "Schedule I: Mortgage Loan Schedule." However, immediately after, the PSA states: "Schedule I: Mortgage Loan Schedule; [Delivered at Closing to Trustee]." Immediately thereafter is "Schedule II — A … Representations and Warranties of Countrywide." The PSA includes no Mortgage Loan Schedule. SupApI, p. 65.
78. The PSA defines the purported Trust's closing date as "October 30, 2006." SupApI, p. 74. MERS is not the identified Depositor, which is the only party contracted to deposit mortgage loans into the Trust.
79. This Trust's founding document prohibits from accepting any predatory loan as defined by state law, or any loan that otherwise violated the PSA. The PSA states that the Trust "makes the representations and warranties" regarding the mortgages held by the trust: "None of the Mortgage Loans are "high cost" loans as defined by applicable predatory and abusive lending laws. . . No Mortgage Loan is a "High-Cost Home Mortgage Loan" as defined in the Massachusetts Predatory Home Loan Practices Act effective November 7, 2004 (Mass. Gen. Laws, c. 183C). . . All of the

Mortgage Loans were originated in compliance with all applicable laws, including, but not limited to, all applicable anti-predatory and abusive lending laws." SupApI, p. 75.

80. Alton King's mortgage was originated on August 8, 2006. AppI, p. 39. The first page of the purported Trust's PSA states that it "is dated as of October 1, 2006." SupApI, p. 60. The purported Assignment of Mortgage from MERS, "as nominee for ComUnity Lending Incorporated, its successors and assigns, to the Bank of New York Mellon, F/K/A, the Bank of New York as Trustee, on behalf of the Registered Holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series J7," "for value received," of "all interest in that certain Mortgage dated: 8/8/2006, in the amount of $1,000,000," is however dated November 28, 2017. AppI, p. 89.

81. November 28, 2017, was more than 10 years after the deadline for selling a Mortgage Loan to a Seller for conveyance to the Depositor for conveyance into this purported Trust. November 28, 2017, was also nine years after ComUnity Lending, Inc., had withdrawn its Massachusetts foreign corporation registration, after which it could not own any real property in Massachusetts. SupApI, p. 34. Therefore, ComUnity Lending, Inc., could not have owned an interest in real property in Massachusetts in 2017.

82. MERS could have had no authority to act as "nominee" for ComUnity Lending, Inc, in selling an "interest in" a mortgage on King's real property in Massachusetts in 2017.

83. PSA's explicitly chosen governing law:

"Section 10.03. Governing Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HERETO AND THE CERTIFICATEHOLDERS SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS." SupApI, p. 61.

84. The New York Estate, Powers and Trust Law (EPTL), 7 — 2.4, applies to the New York Trusts. This statute provides: "If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void." N.Y. Est. Powers & Trusts Law § 7-2.4.

Power of Attorney and Certificate of Attorney Deficiencies

85. The purported foreclosure deed provides a single signatory authority document for Select Portfolio Service, Inc. to sign for Bank of New York Mellon as trustee on behalf of a securitized trust. AppI, p. 101.

86. The limited power of attorney consists of a four-page document recorded at Hamden County Registry of Deeds Book 22403, Page 547. SupApI, p. 79. The third page is the purported signature page. This third page is appears to be produced separately: there is a copier artifact: significant amount of black spots across the page, striation lines cross the page and it is clearly scanned in at an angle, unlike the preceding two pages or the fourth page. SupApI, pp. 79 — 82. Therefore, this third page does not appear to

have any original relationship to the first and second pages, and calls into question this page's origin, along with the fourth page.

87. This document purports to create a limited Power of Attorney between Bank of New York Mellon f/k/a, the Bank of New York as trustee "in connection with the trust named, identified and described in the attached Exhibit A" appointing Select Portfolio Servicing, Inc. SupApI, p. 79.

88. The document explicitly is effective for one year from the date of signing, which was April 20, 2018. SupApI, p. 80.

89. It is signed under "the laws of the State of New York." SupApI, p. 80.

90. It states the authority granted to the attorney in fact by the Power of Attorney is not transferable to any other power or entity. SupApI, p. 80. Therefore, the document explicitly did not allow Select Portfolio's Servicing to transfer any authority to another entity, such as Orlans PC, which placed the advertising in the paper and took other steps to purportedly foreclose on Alton King.

91. In contrast, the purported affidavit of sale, filed with the purported foreclosure deed at the Hampden County Registry of Deeds, Book 22404, Page, 7, states that "Jamie Welch, Esquire, Authorized Signatory, Real Property of Orlans PC, as attorney for the Bank of New York Mellon" attests to the facts therein. AppI, p. 101. Welch is an employee of Orlans PC, as this purported affidavit of sale indicates, and, therefore, is not granted any authority by the limited power of attorney. Welch, or Orlans PC on his behalf, would

need a separate Power of Attorney because Select Portfolios Servicing, Inc., could not transfer their authority to act on behalf of Bank of New Mellon, f/k/a the Bank of New York as trustee, based upon this limited power of attorney.

92. A purported "Certificate of Appointment," recorded October 16, 2018, claims to appoint James R. Jasmin as an agent of "Orlans PC, acting under a Power of Attorney for The Bank of New York Mellon, f/k/a The Bank of New York as Trustee, on behalf of the registered holders of Alternative Loan Trust 2006-J7, Mortgage Pass-Through Certificates, Series 2006 J7." SupApI, p. 86. There is no record of Orlans PC obtaining the authority to act on behalf of The Bank of New York Mellon. The limited power of attorney between Select Portfolio Servicing, Inc. and The Bank of New York Mellon precludes Select Portfolio Servicing, Inc., from delegating any authority to another entity.

I so swear,

Alton King

Alton King, Defendant-Appellee
49 Memery Lane
Longmeadow, MA 01106
Alkingjr2@comcast.net

Date: September 11, 2020