

SANTA FE COUNTY *W*
FILED IN THE CLERKS OFFICE
OF DISTRICT COURT

June 11, 2025

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
SANTA FE COUNTY

WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF
THE HOLDERS OF THE HARBORVIEW MORTGAGE LOAN
TRUST MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2007-1,

Plaintiff,

v.

D-101-CV-2013-00904

Marcelina Y Martinez, CARL J. MARTINEZ; THE BANK OF
NEW YORK MELLON fka The Bank of New York as Successor
Trustee to JP Morgan Chase Bank, N.A., as Trustee on Behalf of
Certificateholders of the CWHEQ Inc., CQHEQ Revolving Equity
Loan Trust, Series 21006-1; GILBERT ROMERO; and
UNKNOWN TENANT (REAL NAME UNKNOWN),

Defendants.

MOTION TO SET ASIDE JUDGMENT AND FORECLOSURE SALE

COMES NOW Marcelina Martinez, "Marcelina", interested party and titleholder, in propria persona, making a special appearance without waiving any rights, remedies, or defenses, statutory or procedural, pursuant to Rules 1-060(B) and moves this Court to set aside the In Rem Judgment and Decree of Foreclosure, entered on August 22, 2016, and the foreclosure sale confirmed on August 4, 2021, in the above-captioned case. If relief is not clear from the record, Marcelina requests an evidentiary hearing to verify and validate facts stated herein. This motion is supported by the affidavit in support, exhibits, and the following legal and factual grounds, which demonstrate that the judgment and sale were procured through procedural irregularities, fraud, lack of jurisdiction, judicial bias, and due process violations, rendering them void or voidable.

INTRODUCTION

This foreclosure action, purportedly initiated by Wells Fargo Bank, N.A., as Trustee for the HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1

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(“WFBNA HV 2007-1”), has been marred by fundamental defects that undermine the validity of the judgment and subsequent foreclosure sale. Marcelina, a pro se litigant, has diligently challenged the Plaintiff’s standing, the authenticity of evidence, the authority of the servicer, and the procedural fairness of the proceedings. She has asserted her right to be heard, which has been denied in this case. It has now required years to determine whether WFBNA HV 2007-1 might have had standing from the onset and whether *summarily* granting foreclosures, *and possession* of property is appropriate. The affidavit filed in support of this motion establishes that the judgment was entered without proof of standing, the foreclosure sale lacked evidentiary support, and judicial bias deprived Marcelina of her constitutional right to due process. These errors necessitate setting aside the judgment and sale to prevent a miscarriage of justice.

LEGAL STANDARD

Under Rule 1-060(B) NMRA, a court may set aside a judgment for reasons including mistake, fraud, misrepresentation, or other misconduct (Rule 1-060(B)(1), (3)), if the judgment is void due to lack of jurisdiction (Rule 1-060(B)(4)), or for any other reason justifying relief (Rule 1-060(B)(6)). A foreclosure sale may be set aside under Rule 1-060(B) and the court’s inherent equitable authority if it was conducted irregularly, fraudulently, or without proper judicial supervision. *See Armstrong v. Csurilla*, 1991-NMSC-081, ¶ 32 (foreclosure sales must comply with due process and be supervised by the court).

A court of equity lacks jurisdiction to dispossess a defendant of property when title is at issue and such dispossession requires an action of ejectment and trial by jury. *See Pankey v. Ortiz*, 1919-NMSC-062, ¶¶ 22-24. Additionally, due process requires notice, an opportunity to be heard, an impartial tribunal, and adherence to procedural rules, including proper representation by counsel of record. *See BOKF, N.A. v. Pacheco*, S-1-SC-40119 (N.M. Apr. 24, 2025) (judgment

void for lack of jurisdiction where proper parties not served). “[D]ue process requires notice, an opportunity to be heard, and an impartial tribunal. A judgment is void only if the court rendering it “lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law.” *Classen v. Classen*, 1995-NMCA-022 ¶ 10, 119 N.M. 582, 893 P.2d; also *Los Chavez Cmty. Assn. v. Valencia Cnty.*, 2012-NMCA-044, 277 P.3d 475. Rule 1-011 NMRA requires pleadings to be signed by attorney of record and Rule 1-089 NMRA governs withdrawal and substitution of counsel.

ARGUMENT

I. The Judgment is Void for Lack of Standing and Jurisdictional Defects

The complaint alleges that the plaintiff is entitled to foreclosure of a note and mortgage and to have its lien declared superior to all other *lien interests* (Comp. ¶ 17). It further seeks possession on behalf of a “purchaser”, whose identity is unknown at the time of filing of the complaint (Comp, ¶ E) and who would ultimately assert a distinct capacity, as titleholder rather than lienholder thereby lacking standing in the foreclosure case. *Romero v. State*, 1982-NMSC-028 ¶ 19, 97 N.M. 569, 642 P.2d 172 (A foreclosure action is used to establish the priority of various liens; it does not necessarily litigate title to land).

The Complaint also seeks an “order of forcible entry and detainer directing that the plaintiff be allowed immediate possession of the property...” (Comp, ¶ F) but the allegations fail to allege anything affording this relief and nothing indicates the plaintiff would be entitled to possession based on allegations of lien superiority. Further, this section fails to invoke a statute or authority; however, it would appear that the relief granted purported to be under NMSA 1978 § 35-10-1, which falls under the limited jurisdiction of the Magistrate Court. The Magistrate Court’s jurisdiction extends to controversies less than \$10,000 but grants the district court concurrent

jurisdiction over controversies of rents above \$50 (§ 35-3-3), neither of which apply here. Magistrate Court does not have jurisdiction to adjudicate title disputes. Further, at the time of filing of the complaint, the “plaintiff” can only claim standing to foreclose a lien, not to possession of property as a titleholder and the allegations do not invoke the magistrate court’s jurisdiction.

Likewise, the allegations do not show authority for the court to grant possession of property post-foreclosure to anyone not a party to the action (no personal jurisdiction or standing). “A judgment may not grant relief which is neither requested by the pleadings nor within the theory on which the case was tried.” *Armstrong*, ¶ 14. Indeed, this court might have had jurisdiction where WFBNA HV 2007-1 was a plaintiff asserting a lien interest; however, upon Judgment and execution via a sale case ended. The purchaser of a valid sale becomes a titleholder. Even if the foreclosure plaintiff would ultimately be the “purchaser” it does not assert this capacity at the time of filing the complaint nor does it have standing to seek possession. The court thus no longer had jurisdiction over the parties or subject matter. The Judgment is void for this reason alone.

The In Rem Judgment and Decree of Foreclosure, entered on August 22, 2016, is also void because Plaintiff WFBNA HV 2007-1 failed to establish standing to foreclose, a jurisdictional prerequisite. *See Bank of N.Y. v. Romero*, 2014-NMSC-007, ¶ 17 (standing requires proof of ownership of the note and mortgage at the time of filing). The affidavit demonstrates:

A. No Evidence of Authority

The sole “evidence” to support summary judgment was an affidavit by Diane Weinberger, an employee of Select Portfolio Servicing, Inc. (“SPS”), claiming to act as Plaintiff’s “attorney-in-fact.” This case was prosecuted by the various attorneys representing SPS, not WFBNA; however, no power of attorney (POA) was ever produced, despite Marcelina’s challenges (Aff. ¶¶ 8, 12-15). Without a POA, SPS lacked authority to act on Plaintiff’s behalf, undermining the

court's jurisdiction. *See Deutsche Bank Nat'l Trust Co. v. Johnston*, 2016-NMSC-013, ¶¶ 13, 23 (standing requires proof of authority to act); *see also Miera v. Miera*, 1919-NMSC-016, 25 N.M. 299, 181 P. 583.

Further, the Affidavit supporting summary judgment claims that the "Trust" engages a document custodian that holds the original documents. No mention of the identity of this custodian was made. No evidence of authority of the custodian to hold (e.g. "possess") the note was produced and the absence of a power of attorney means that Weinberger could not legally act as attorney-in-fact, and the plaintiff cannot rely on either the servicer's or document custodian's possession therefore standing was not properly established either via allegations in the complaint or through attached exhibits. Without proof of authority of both SPS and the "document custodian", the Plaintiff failed to establish standing. Such failure voids the judgment and warrants dismissal for lack of subject matter jurisdiction (*Deutsche Bank*). Further, failure to disclose SPS's role or proof of its authority is a deprivation of due process further warranting avoidance and dismissal.

B. Questionable Note Authenticity

The "note", inspected on November 14, 2014, bore a label from Richmond Monroe Group, suggesting it was not in Plaintiff's possession at the time of filing, as it is different than the copy attached to the complaint (Aff. ¶ 20), *see Bank of New York v. Romero*, 2014-NMSC-007 ¶ 10, 32 P.3d 1. This raises concerns of securitization fraud and failure to prove ownership of the note. *See Kemp v. Countrywide Home Loans, Inc.*, No. 08-18700, 2010 WL 11575267 (Bankr. D.N.J. Nov. 16, 2010) (questioning note authenticity in similar circumstances); *see also* argument above.

C. Trustee Termination

Public records indicate WFBNA's trustee status was terminated following a sale to Computershare, potentially before the sale confirmation (Aff. ¶ 18, Ex. D). Nothing on the public

record shows whether the Harborview Series 2007-1 Trust was in existence at the time of sale or if it acquired the subject note. The numerous due process violations in this case deprived Marcelina of discovering such evidence. It is possible that this, alone, deprived the court of jurisdiction to issue a judgment. However, even if standing existed at that time, it is clear that standing was lost at latest on November 1, 2021. If Plaintiff was no longer trustee, it lost standing to engage in this action whatsoever after that date and, especially to seek possession of Marcelina's property.

The absence of standing divested the court of subject matter jurisdiction, as foreclosure actions require a plaintiff with a legal interest in the property. *See Romero v. State*, 1982-NMSC-028. Standing must be maintained throughout the action. The judgment must be set aside under Rule 1-060(B)(4), as purported standing was lost possibly prior to the foreclosure "sale" but definitively before the application for writ of assistance.

II. The Foreclosure Sale Was Irregular Lacking Evidentiary Support and Due Process

The foreclosure sale, confirmed on August 4, 2021, was conducted irregularly, without evidence and unsupervised by the court, violating due process and Rule 1-053(E) NMRA. The affidavit establishes:

A. Unauthorized Special Master

The sale was purportedly conducted by David Washburn, despite the court appointing Hon. Jay Harris (ret.) as special master (Aff. ¶ 28, Ex. F ¶ PP). No proper substitution occurred under Rule 1-053 NMRA (Aff. ¶ 29). Washburn's report lacked evidence of a sale, such as bidder details or consideration paid (Aff. ¶ 30). His reliance on an email from Tiffany & Bosco, P.A., claiming a "client bid" of \$702,000, is insufficient to prove a valid sale (Aff. ¶ 98).

B. Lack of Court Supervision

Foreclosure sales must be conducted under court supervision to ensure due process. *Armstrong v. Csurilla*, 1991-NMSC-081, ¶ 32. Judge Biedscheid admitted to confirming the sale without evidence (Aff. ¶ 99), and his description of the sale as “perfunctory” demonstrates a failure to supervise (Aff. ¶ 40). The numerous discrepancies between the judgment and sale also indicate a lack of oversight. See also section V below.

C. No Evidence of Title Transfer:

Marcelina’s repeated requests for evidence of a sale, including through IPRA requests and subpoenas, were denied or ignored (Aff. ¶¶ 33-35, 47, 88-89). No documentation shows consideration paid or title transferred, rendering the sale invalid.

These irregularities, combined with the absence of evidence, justify setting aside the sale under Rule 1-060(B) NMRA.

III. Judicial Bias and Due Process Violations Deprived Marcelina of a Fair Hearing

Judge Biedscheid’s actions throughout the proceedings demonstrate bias against Marcelina, a pro se litigant, and violated her due process rights to an impartial tribunal, opportunity to be heard and a trial by jury before a court can seize property. *See Classen, Id.* and *Pankey, Id.* The affidavit details:

A. Failure to Hold Hearings

Judge Biedscheid denied critical motions, including Marcelina’s motion to quash the writ of assistance and motion to compel evidence, without hearings (Aff. ¶¶ 53, 55, 59, 73). This deprived Marcelina of her right to present evidence and arguments, particularly in matters involving property seizure. *Los Chavez Cmty. Assn. v. Valencia Cnty.* 2012-NMCA-044, 277 P.3d 475; *see also Pankey*, ¶¶ 10, 16-17, 25. None of the claims nor, especially, title was actually litigated. *See Romero*, ¶ 15.

B. Ex Parte Communications and Improper Rulings

Judge Biedscheid engaged in *ex parte* communications with Deputy Stephen Orr, advising execution of the amended writ despite lacking jurisdiction (Aff. ¶ 82). He issued orders citing a non-existent local rule (LR1-306(H)) and misapplied case law (*National Excess Ins. Co. v. Bingham*, 1987-NMCA-109) irrelevant to property seizure motions (Aff. ¶¶ 55, 59, Ex. J). Judge Biedscheid stated the writ could be executed because there was no stay on the record; however, he completely ignored the fact that the writ sought to be executed was amended while the original was on appeal thus Rule 1-062 NMRA was inapplicable.

C. Bias Against Pro Se Litigant

Judge Biedscheid's dismissive statements, such as calling the sale "perfunctory" and threatening sanctions for "meritless" motions, reflect prejudice against Marcelina's efforts to protect her property (Aff. ¶¶ 40, 60). His refusal to recuse in related Case D-101-CV-2023-01229, despite personal knowledge of disputed facts, further evidences bias (Aff. ¶¶ 84-87, 93, Ex. M).

D. Improper Writ Issuance Absent Jurisdiction

The writ of assistance, issued on October 11, 2022, and amended on April 3, 2022, was granted without a hearing, without evidence of title transfer, and under an inapplicable magistrate court statute (NMSA 1978 § 35-10-1) rather than Rule 1-065 NMRA (Aff. ¶¶ 62-63), requiring a writ of possession through ejectment (NMSA 1978 § 42-4-1). The amended writ was issued after jurisdiction transferred to the Court of Appeals, rendering it void (Aff. ¶¶ 66-71).

These actions violated Marcelina's due process rights under the Fifth and Fourteenth Amendments and New Mexico law, justifying relief under Rule 1-060(B)(6).

IV. Procedural Irregularities in Attorney Representation Violated Due Process

The proceedings in this case have been marred by significant violations of Rule 1-011 NMRA and Rule 1-089 NMRA, which require pleadings to be signed by an attorney of record and mandate formal substitution or withdrawal of counsel. These irregularities constitute additional due process violations, as they prejudiced Marcelina’s ability to respond to filings and receive proper notice. Specifically:

A. Lack of Proper Attorney of Record

Since 2017, no attorney has been properly substituted as counsel of record for Plaintiff, with Holland & Hart LLP (Larry Montano) remaining the last attorney of record (Aff. ¶ 50). Multiple law firms, including Houser LLP (Solomon Krotzer), Tiffany & Bosco, P.A., Aldridge Pite LLP, and Gordon Rees Scully Mansukhani (Solomon Krotzer), have filed documents without formal substitution under Rule 1-089 NMRA (Aff. ¶¶ 26, 31, 44, 50, 68, 90). For example, Solomon Krotzer filed a “consolidated motion” on August 8, 2023, under a new firm (Gordon Rees Scully Mansukhani) with only a “notice of change of law firm and address,” without seeking or obtaining substitution as counsel of record.

B. Prejudice to Marcelina

The constant shifting of attorneys without substitution created confusion and deprived Marcelina of clear notice of who represents Plaintiff, hindering her ability to serve responses and engage in the litigation process. This is particularly egregious given Marcelina’s pro se status, which requires the court to ensure procedural fairness. *See Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096 ¶ 21, 118 N.M. 470, 882 P.2d 511 (The Fourteenth Amendment to the U.S. Constitution guarantees citizens the right to procedural due process in state proceedings).

C. Impact on Due Process

The failure to adhere to Rules 1-011 and 1-089 NMRA undermines the integrity of the judicial process and violates Marcelina's right to a fair proceeding. These irregularities, combined with the other due process violations outlined above, further justify setting aside the judgment and sale under Rule 1-060(B)(6).

V. The Judgment and Sale Amounts Were Unsupported and Inconsistent Violating Due Process

The judgment and sale were further tainted by inconsistencies in the monetary amounts awarded:

- The judgment granted \$492,890.23, less than the \$617,126.09 requested in the motion for summary judgment, without explanation or a separate motion for costs and fees (Aff. ¶¶ 23-24).
- The Notice of Sale claimed \$617,126.09 with unapproved interest at 3.375% from May 30, 2015, neither of which was authorized by the judgment (Aff. ¶¶ 26-27).
- The discrepancies between the Notice of Sale and Judgment resulted in unapproved interest in the amount of \$120,111.30 and a total alleged final judgment amount of \$244,347.16 in excess of what was granted (See Order Confirming Sale filed August 4, 2021).

These discrepancies indicate the judgment and sale were entered arbitrarily and unsupervised by the court, further supporting relief under Rule 1-060(B)(1) and violated notice requirements, Rule 1-053 requirements, and due process, further supporting relief under 1-060(B)(4).

VI. Marcelina's Paramount Title Claim Was Not Adjudicated

Marcelina asserts paramount title to the property through a certified chain of title tracing back to the Santa Cruz Grant land patent (Aff. ¶ 4, Ex. A). The court failed to adjudicate this claim, which required a jury trial before seizure of property *Pankey v. Ortiz*, 1919-NMSC-062, ¶¶ 23-24, where title is disputed and the defendant is in possession. The issuance of a writ of assistance

without evidence that title transferred via a foreclosure sale and without litigating title violated Marcelina's constitutional right to a jury trial (Aff. ¶¶ 48, 64-65) and granting such relief without a hearing further violated her rights. It is wholly improper to grant possession of property based on summary judgment where title is not litigated and where no evidence of consideration or property conveyance exists.

RELIEF REQUESTED

Based on the foregoing, Marcelina respectfully requests that this Court:

- A. Grant Marcelina's Second Motion for Recusal** affording her a right to an impartial tribunal.
- B. Set Aside the Judgment:** Vacate the In Rem Judgment and Decree of Foreclosure entered on August 22, 2016, as void for lack of standing and jurisdiction, pursuant to Rule 1-060(B)(4), or for fraud, mistake, and misconduct under Rule 1-060(B)(1), (3), or other reasons justifying relief under Rule 1-060(B)(6).
- C. Set Aside the Foreclosure Sale:** Vacate the confirmation of the foreclosure sale on August 4, 2021, as irregular and unsupported by evidence, pursuant to Rule 1-055(E) NMRA.
- D. Stay Execution of Any Writs:** Stay the issuance of any further writs of assistance.
- E. Grant an Evidentiary Hearing:** Schedule a hearing to allow Marcelina to present evidence and arguments supporting her claims, including her paramount title and the lack of evidence of a valid sale.
- F. Other Relief:** Grant such other and further relief as the Court deems just and proper.

CONCLUSION

The judgment and foreclosure sale in this case were procured through jurisdictional defects, procedural irregularities, and judicial bias, depriving Marcelina of her constitutional rights to due

process and a fair hearing. The absence of evidence supporting Plaintiff's standing, the special master's authority, or the sale itself, combined with Judge Biedscheid's actions, warrants setting aside the judgment and sale to prevent an injustice. Marcelina respectfully urges the Court to grant this motion and restore her property rights.

Respectfully Submitted

/s/Marcelina Martinez
Marcelina Martinez, *pro per*
Interested Party
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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2025 I served a copy of the foregoing Motion to Set Aside Judgment and Foreclosure Sale and Affidavit in Support of Motion to the following via e-mail:

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