

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

WILMINGTON SAVINGS FUND SOCIETY,  
FSB, NOT IN ITS INDIVIDUAL CAPACITY,  
BUT AS TRUSTEE FOR ARLP TRUST 5,  
Plaintiff

Case No: 2015-012140-CA-01

Vs.

SUKHMINDER S. BAHAD  
and  
GABRIELA BAHAD, et al.  
Defendants.

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**VERIFIED MOTION FOR DISQUALIFICATION OF  
CIRCUIT COURT JUDGE MICHAEL A. HANZMAN**

COMES NOW Defendant Gabriela Bahad by and through the undersigned Counsel ALFONSO E. OVIEDO and moves pursuant to Rule 2.160 and 2.330, of the Florida Rules of Judicial Administration, and Florida Statute 38.10, to Recuse / Disqualify Circuit Court Judge Michael A. Hanzman from further involvement in the Case at hand, which as of this day, is still pending a decision on the Objection to the Sale of the property of the Defendant Gabriela Bahad which sold for TWO HUNDRED DOLLARS when that property is worth, by the acknowledgment of the Plaintiff, ONE MILLION DOLLARS. It is also pending an appeal on the fact that Judge Hanzman completely ignored all the facts presented by Defendant Gabriela Bahad that supported the fact that the Promissory Note was NOT signed by the alleged maker of the Note, her former Husband Sukhminder S. Bahad a legitimate defense that is a valid one in equity as this Case is under in a Foreclosure Action. In support of the motion to disqualify the Defendant Gabriela Bahad states as follows:

**"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."**

**The above is applicable to this court by application of Article VI of the United States Constitution and Stone v Powell, 428 US 465, 483 n. 35, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976).**

**"State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law."**

### **THE STANDARDS APPLICABLE TO RECUSAL OF JUDGES IN FLORIDA:**

Legal sufficiency is governed by a reasonable person standard. The affidavit must recite facts and circumstances that would lead any normal human being in the position of [the movant] to 'fear' that he would not receive a fair trial... Dickenson v. Parks, 104 Fla. [577] at 582, 140 So. [459] at 462 [(1932)]; accord Fischer v. Knuck, 497 So.2d 240 at 242 [(Fla. 1986)]; Livingston v. State, 441 So.2d 1083 at 1087 [(Fla. 1983)]. 'If the attested facts supporting the suggestion are reasonably sufficient to create such a fear, it is not for the trial judge to say that it is not there.' Livingston v. State, 441 So.2d at 1087 (quoting State ex rel. Davis v. Parks, 141 Fla. 516, 518, 194 So. 613, 614 (1939)). So long as the allegations 'are not frivolous or fanciful, they are sufficient to support a motion to disqualify...' Hayslip v. Douglas, 400 So.2d 553, 556 (Fla. 4th DCA 1981) (quoting State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697-98 (1938)).

**In the present case the legal standard is met.**

**Disqualification is required. As has often been said:**

Prejudice of a judge is a delicate question to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. It is a matter of no concern what judge presides in a particular cause, but it is a matter of grave concern that justice be administered with dispatch, without fear or favor or the suspicion of such attributes.

The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel, and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy.

The judiciary cannot be too circumspect, neither should it be reluctant to retire from a cause under circumstances that would shake the confidence of litigants in a fair and impartial adjudication of the issues raised. Dickenson v. Parks, 104 Fla. 577, 582-84, 140 So. 459, 462 (1932).

*Livingston v. State*, 441 So.2d 1083-86. See generally *Brown v. St. George Island, Ltd.*, 561 So.2d at 253-257.

1. The disqualification of a Judge is not a reflection on the personal ethics, qualifications or abilities of the Judge. It is a motion directed only to the appropriateness of the Judge serving on a particular case. Because of the facts and circumstances involved in this case, it must be reassigned to another Judge
2. The requirements for a motion for recusal or disqualification motion are fairly well-established. The party seeking recusal or disqualification must file a motion explaining that the party fears that it “will not receive a fair trial . . . on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party.” §38.10, Fla. Stat. (2014). The motion’s allegations must be sworn, which requires an affidavit or that the motion be verified.
3. The judge must review an initial recusal or disqualification motion only for its legal sufficiency, and may not pass on the truth of the facts. **If the motion to disqualify is legally sufficient, the judge must immediately grant it and take no further action in the matter. Fla. R. Jud. Admin. 2.330(f)**. In general, a trial judge who enters an order of disqualification or recusal is prohibited from further participation in the case, and any subsequent orders by that judge are void. *Lake v. Lake*, 14 So. 3d 284 (Fla. 3d DCA 2009).

4. The **Florida Rules of Judicial Administration** are a set of rules by the Florida Bar and the Florida Supreme Court which set for standards of **conduct** for judges.
5. In making a determination on an initial **motion for disqualification**, the trial court **must follow** the requirements of **rule 2.330(f)** of the Florida Rules of Judicial Administration
6. The trial court **must determine** only if the *motion is legally sufficient*; the **trial court may not consider whether the factual assertions of the motion are true.** *Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978). The rule expressly “limits the trial judge to a bare determination of legal sufficiency” in order to prevent disqualification proceedings from becoming adversarial. *Id.*
7. The **facts alleged** in a **motion seeking to disqualify a trial judge** must be evaluated as true for the purposes of determining legal sufficiency. *City of Hollywood v. Witt*, 868 So. 2d 1214, 1217 (Fla. 4th DCA 2004).
8. The trial court **cannot insert its own views** regarding the facts or the motivations of the parties but “must review the motion from the litigant’s perspective. . . .” *Jimenez v. Ratine*, 954 So. 2d 706, 708 (Fla. 2d DCA 2007)
9. The test for determining the legal sufficiency of a motion to disqualify is whether the motion shows “a well-grounded fear that the movant will not receive a fair trial at the hands of the judge.” *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So. 2d 1332, 1334 (Fla. 1990). “A determination must be made as to whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial.” *Livingston v. State*, 441 So. 2d 1083, 1087 (Fla. 1983). Furthermore, “[i]t is not a question of how the judge feels; it is a question of what feeling resides in the affiant’s mind and the basis for such feeling.” *Id.* at 1086 (quoting *State ex rel. Brown v. Dewell*, 179 So. 695, 697-98 (Fla. 1938)). The

facts disclosed in the record before this Court establish the legal sufficiency of the State's motion, and therefore, we grant the petition for writ of prohibition.

10. This motion to disqualify Judge Hanzman will show that is based on a well-grounded pleading that the Movant Gabriela Bahad has not received a fair trial in these foreclosure proceedings, and will not receive a fair trial in the new pleadings filed by her objecting to the Sale of her property, which is being taken from her without a fair hearing of the issue that the Note that is being executed is a fraud. Judge Michael A. Hanzman. Judge Hanzman is prejudiced against the Defendant Gabriela Bahad and for that reason he should recuse himself from this case.

**FACTS THAT JUSTIFY THE RECUSAL/DISQUALIFICATION OF  
CIRCUIT JUDGE MICHAEL A. HANZMAN**

1. Circuit Judge Michael A. Hanzman has been "biased" against the defendant Gabriela Bahad and her attorney Alfonso Oviedo from the beginning of his taking over this case and has been "biased" in every hearing held in front of him. Judge Hanzman has shown special treatment towards the plaintiff, ignoring all of the arguments regarding the fraud in the Promissory Note and in the Mortgage that have forged signatures that can be plainly seen not to be the signature of the alleged maker Sukhminder S. Bahad when compared to his signature in his Driver's License, his Passport and his Alien Resident Card. In those documents his signature shows a clearly readable "S. Bahad" every time.
2. Judge Hanzman tossed aside without explaining why all the arguments about the lack of standing, lack of capacity to sue by the alleged plaintiff, and the fact that the payee of the promissory note in execution, is not the person who signed the note or the mortgage.

3. Further, the Promissory Note that was filed by the Plaintiff at the bench trial is not the original Promissory Note, **it is a photocopy**. Yet the Judge is so partial to the Plaintiff that he did not flinch when the observation was made that the Note did not look original.
4. That is a verifiable fact that should have concerned the court as it is fraud on the court, but in the case of judge Hanzman, he simply admitted the documents as originals without any further consideration. Impartiality was gone when that note went into the record without the opportunity of a real testing of the nature of the document Promissory Note that has to be filed in ORIGINAL for it to be a valid instrument to operate a foreclosure.
5. Plaintiff in the case at hand and its attorneys committed fraud on the court by pretending to be “the owner and holder in due course of the promissory note and mortgage” but in reality, both the promissory note and the mortgage were not signed by the alleged maker Sukhminder S. Bahad. Judge Hanzman allowed those documents to be filed as if these were good documents. Further, the Promissory Note was securitized and made part of a pool of mortgages that were sold to investors that bought shares of interest in the POOL. As a result the Promissory Notes in the Pool were cancelled and the Promissory Note was worthless, since it became a part of a Pool to which the Trustee did not show he had a right to enforce the interest of that already cancelled Note.
6. Both documents have a mark, NOT A SIGNATURE, that is nowhere near the signature of Mr. Bahad. Once the said allegation was made by the Defendant Gabriela Bahad, it was incumbent on the Plaintiff to show that the documents were in fact signed by Mr. Bahad, but judge Hanzman did not muster a word about the issue it had in front of him and simply entered a judgement in favor of his favorite party, the plaintiff. this judge never even considered reviewing the facts related to this argument.

7. The ORIGINAL PLAINTIFF in the case at hand Christiana Trust, appear as a Trustee. However, the Court never saw a trust document or a pool servicing agreement that gave authority to the said Trustee, who insisted on saying that it was appearing NOT ITS INDIVIDUAL CAPACITY BUT AS A TRUSTEE. Yet Judge Hanzman dispensed with the fact that no documentation of authorization to act as a trustee was filed with the Court to show that the ORIGINAL PLAINTIFF HAD STANDING.
8. The fact that there was an endorsement of the Mortgage to Wilmington did not amend or cured the nullity that comes from the fact that the Note was a CANCELLED PROMISSORY NOTE; and the Plaintiff did not provide any evidence showing it had authority to commence the foreclosure action in this case. But all that was overlooked by Judge Hanzman and while these matters are already on appeal, the fact remains that it shows the prejudice and the bias that Judge Hanzman has against the Defendant Gabriela Bahad and her undersigned Attorney.
9. Although the Plaintiff established that it possessed a photocopy of the note at the time the complaint was filed and it filed another photocopy of the original note indorsed in blank, the record does not show that the signature in the Note was that of Mr. Bahad who is supposed to be the signatory of the Note. To the contrary, the impeaching documents show that the signature in the note is not his when compared to his signature in all of his official identification documents. The Plaintiff therefore failed to prove that it had standing as the holder of the note when it commenced the action, but Judge Hanzman just went along to render a summary judgment for the Plaintiff.
10. Further, the Plaintiff failed to prove that it was a non-holder in possession of the note with the rights of a holder or authorized by the alleged Holder to foreclose the Note and Mortgage. The Plaintiff introduced no power of

attorney, pooling and servicing agreement, or other evidence to show that the real party in interest authorized it to bring the action. Consequently, Christiana Trust or the subsequent substitute Plaintiff Wilmington failed to prove they had standing to enforce the note. Judge Hanzman never even perused the file to find if in fact those allegations by Gabriela Bahad were true.

11. Pursuant to Florida Rule of Civil Procedure 1.420(b), “after a party seeking affirmative relief in an action tried by the court without a jury has completed the presentation of evidence, any other party may move for a dismissal on the ground that on the facts and the law the party seeking affirmative relief has shown no right to relief.” But Judge did not consider any such possibility as it was presented to him by the Defendant Gabriela Bahad in limine and was absolutely disregarded by his prejudice.
12. With regards to bearer notes, courts of many States including Florida, have concluded there was no standing because there was no proof of ownership of the note
13. The national Uniform Commercial Code Comment to this statute explains that the exception announced in subsection (2) was adopted because “**[a] person who is party to fraud or illegality affecting the instrument is not permitted to wash the instrument clean by passing it into the hands of a holder in due course and then repurchasing it.**” § 673.2031, Fla. Stat. Ann., UCC cmt. 2 (West 2010); however, the prejudice of Judge Hanzman is clear when he has allowed precisely that kind of conduct to take place in this case without a word from him when that is called to his attention.
14. Judge Hanzman has not only completely dismissed the arguments of the Defendant Gabriela Bahad, for all of the above he has to give a reason why he is a good and fair judge for this case.



15. A servicer that is not the holder of the note may have standing to commence a foreclosure action on behalf of the real party in interest, but **it must present evidence, such as an affidavit or a pooling and servicing agreement, demonstrating that the real party in interest granted the servicer authority to enforce the note.** See *id.* (“[A] servicer may be considered a party in interest to commence legal action as long as the trustee joins or ratifies its action.”) (emphasis omitted); see also *Russell v. Aurora Loan Servs., LLC*, 163 So.3d 639, 643 (Fla. 2d DCA 2015) (reversing final judgment of foreclosure where servicer failed to adduce evidence of predecessor's authority to bring suit). However, Judge Hanzman at all times ignored the fact that Gabriela Bahad was claiming that the Plaintiff did not have the standing to foreclose because he failed to show authority to do so. Judge Hanzman could not be more biased and prejudiced.
16. In this case, the Plaintiff, did not present any evidence showing that the Real Party In Interest granted the servicer to which the Plaintiff is the Trustee for gave the Plaintiff authority to enforce the Note and the Mortgage. And although it was brought to the attention of Judge Hanzman, he chose to ignore it. He cannot be fair, and he never was. He cannot be impartial, and he never was.
17. In summary, the Verified Complaint for Mortgage filed by the Plaintiff clearly shows that the Plaintiff is NOT the owner of the note and mortgage and it is only a TRUSTEE, BUT the Plaintiff has not shown any documents that would credit it to be in fact a TRUSTEE. All we have is the substitution to cure the deficiencies of the Complaint, but the Judge Hanzman did not want to see that failure that should have warranted a dismissal.

18. Judge Hanzman even asked at the Bench Trial: “Where did the money go” with that statement I was convinced that the Plaintiff did not need an attorney to represent it, it already had the Judge to do its bidding.
19. Judge Hanzman conducted the Bench Trial of Foreclosure while I was sick. Attached is the record where he clearly admits that I was sick. Judge Hanzman did reset the matter for a later date. All the Plaintiff Lawyer had to do was complain for Judge Hanzman to continue forward with the trial on the day when I was at all times holding back from defecating in my pants as I was severely sick. I did my best to hold until I was released from the torture that I was under, but I feel that my client would not get a fair hearing on any issue that comes before Judge Hanzman since he has given me a taste of what he has in his mind about the case.
20. Now we have his insistence on proceeding to a Hearing to deny the pending Motions that my client has to the validity of the sale where the fact that the house was sold for two hundred dollars when it is worth a million dollars; will not offend Judge Hanzman sensibilities of equity or fairness but it will be tossed aside to generate another atrocity with this procedure. Your Honor has made up his mind about this matter and that is not fair to my client.
21. Attached please find a copy of the record of the Bench Trial of July 19<sup>th</sup> of 2018; which contains all the facts that transpired in the bench trial as related in this Motion.

Pursuant to Rule 2.160(d)(1), Gabriela Bahad fears that she will not receive a fair trial or hearing on the Objection to the Sale AND on the Motion to Dismiss with Prejudice because of the specifically described prejudice or bias of Judge Hanzman against her.

WHEREFORE, Defendant Gabriela Bahad and her Counsel Alfonso E. Oviedo, respectfully requests the Honorable Judge Michael A. Hanzman to disqualify and recuse himself from any further proceedings in this case, as set forth above in the Petitioner's Motion for Disqualification of Judge Hanzman. The Movant requests Judge Michael A. Hanzman to enter an order for his Recusal, and order the vacation of every Order entered by him in this case; to order the stay of the sale of the property in foreclosure and reassign the case to another Judge.

Respectfully submitted this 16<sup>th</sup> day of July, 2019, by

S./Alfonso E. Oviedo

**ALFONSO OVIEDO-REYES**

Attorney for Gabriela Bahad

Florida Bar # 0478172

8370 W. Flagler Street, Suite 110

Miami, Florida 33144

Phone: (305) 221-6433 /Fax: (305) 221-6519.

Email: [oviedo13@gmail.com](mailto:oviedo13@gmail.com)

### **CERTIFICATE OF SERVICE**

I, HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Disqualification was served by email this 16<sup>th</sup> day of July, 2019, to the Attorneys of Record listed in the e-filing portal of the Florida Courts which will send a copy to the attorneys for the Plaintiff.

S./Alfonso E. Oviedo

**ALFONSO OVIEDO-REYES, ESQ.**