No. 126606

In the Supreme Court of Illinois

PNC BANK NATIONAL ASSOCIATION,

Plaintiff-Appellee,

vs.

JERZY KUSMIERZ AND HALINA KUSMIERZ,

Defendants-Appellants,

BRIAN T. HEATH, NELLISA S. RAGLAND, AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Respondents-Appellees.

On Appeal from the Appellate Court
Second District, No. 2-19-0521
On Appeal from the 18th Judicial Circuit Court
DuPage County, Illinois Case
No. 2011 CH 1585
Honorable James D. Orel, Judge Presiding

ILLINOIS MORTGAGE BANKERS ASSOCIATION'S *AMICUS CURIAE* BRIEF

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PREFATORY STATEMENT

One of the issues presented in this appeal, namely, whether the equitable doctrine of *laches* is available to a mortgagee to defend against a collateral attack on a completed foreclosure on the ground that it is void for lack of jurisdiction, is of great importance to the *Amicus Curiae*, the Illinois Mortgage Bankers Association ("IMBA"), who comes before this Court as the voice of the Illinois mortgage industry.

While this issue may seem to be just about the viability of a long recognized affirmative defense, unraveling a completed foreclosure is not simply a civil procedure concern, but has serious and costly ramifications for mortgage lenders, title insurance companies, home buyers and their communities. It will often implicate whether foreclosed property is returned to the real estate market; disentangling the rights of possession and the rights of subordinate lien holders; adjudicating claims for reimbursement and indemnity between the investors holding the loans and the servicers servicing the loans; and settling of insurance claims. Many times, as in the case before the Court, the subject property has been significantly improved by subsequent owners, at great cost and effort, which means resurrecting a long-completed foreclosure will also involve sorting out how the increased value of the property will be treated. In some instances, particularly in very old cases, the property may have passed hands several times such that undoing a foreclosure could trigger complicated litigation dragging in prior owners, their mortgage lenders and title insurers.

If an Illinois foreclosure can be unwound because of a void judgment years after it was completed, without allowing subsequent purchasers the right to defend the voidness challenge under the doctrine of *laches*, it would undermine the inviolability and reliability of land titles upon which the mortgage and real estate industries rely. The resulting

uncertainty over the security of title would increase the cost of title insurance and the cost of mortgage lending as well. It may even result in a reduction of mortgage credit availability to Illinois borrowers, at least with respect to foreclosed properties, as the prospect of clouded title, unending future litigation and unknown liabilities relating to properties recovered in foreclosure would have a chilling effect on lenders, mortgage and title insurance companies, secondary market investors and servicers to invest in Illinois mortgage loans secured by previously foreclosed properties.

In this brief, Amicus will stress that this appeal seeks to overturn and change existing precedent and decades old law that the equitable doctrine of *laches* is an available defense to a suit even where the judgment under attack is void. While there are statutory protections available for certain persons facing these kinds of suit and express statutory limitations on certain types of claims, there many persons and situations where the only defense would be laches. A reversal of this law, and of the Courts' judgment below, would have adverse consequences far beyond mortgagees in foreclosures and the parties in this case. A clear and unequivocal statement by this Court confirming the continued viability of the laches defense in cases challenging a void judgment will have a stabilizing effect on the real estate market. Mortgage lenders, like the Amicus's members, and other persons relying on the inviolability of land titles, will be able to continue to serve the public without having to increase the cost of mortgage lending to hedge against the risk that their security interests will be jeopardized by belated attacks on their title.

STATEMENT OF INTEREST

The Illinois Mortgage Bankers Association ("IMBA" or "Amicus") is the oldest state not-for-profit trade association of mortgage bankers. Since 1920, the IMBA has

continuously promoted mortgage banking and real estate financing and safeguarded and protected Illinois borrowers and its members, which include non-depository mortgage bankers, community and national banks, credit unions, title and mortgage insurance companies, mortgage servicers and secondary market mortgage loan purchasers, including government sponsored entities such as Fannie Mae, Freddie Mac and the Federal Home Loan Bank of Chicago, and state agencies, such as the Illinois Housing Development Authority. The IMBA has undertaken such activities by promoting mortgage education of borrowers and members, by making known the mortgage industry views, practices, activities and products available to its members and to the general public, and by representing the interests of its members and Illinois borrowers before legislative authority, regulatory bodies and the courts.

The IMBA's interest in this case arises from the potential adverse effect that would result if this Court does not affirm the availability of the laches defense in collateral attack on judgment on the ground of voidness. This issue is not limited to the parties to this appeal but would broadly affect Illinois mortgage lenders, servicers, secondary market mortgage loan purchasers, mortgage and title insurers and, importantly, Illinois borrowers and real estate buyers. The IMBA, in this brief, supports the Appellees' position to preserve the availability of the equitable doctrine of laches as an affirmative defense to collateral attack on judgment on the ground of voidness for lack of jurisdiction, and urges this Court to affirm its prior holding and the Courts' judgment below.

BACKGROUND

The Proceedings Below

The underlying case concerned the Plaintiff-Appellee's, PNC Bank, National

Association ("PNC") attempt to foreclose a residential mortgage on a property located at 1405 Wisconsin Avenue in the Village of Lombard, in DuPage County, Illinois ("Property"). The mortgagors, Defendant-Appellants, Jerzy and Halina Kusmierz (the "Kuzmierzes") could not be found at the Property, so PNC caused them to be personally served with summons in the Village of Palatine, located in Cook County, Illinois. They were served on April 1, 2011 but the order authorizing the private process server to serve them was not entered until April 4, 2011.

The Kuzmierzes did not appear or defend the foreclosure and the Property was sold to PNC at a judicial sale in June 2012. About a year later, PNC sold the Property to Appellees Nellisa S. Ragland and Brian T. Heath (the "Current Owners"). The Current Owners invested substantial sums of money improving the Property including taking out about $300,000 in loans from STC Capital Bank to finance the construction of a new home on the Property.

In September 2018, over seven years after they were served and six years after the foreclosure sale, the Kuzmierzes brought a petition under Section 2-1401 of the Illinois Code of Civil Procedure (the "Code"), 735 ILCS 5/2-1401 ("Section 2-1401"), to set aside the foreclosure on the grounds that the foreclosure court never had jurisdiction. They alleged that the service of summons was defective because the process server who served them had not been appointed to serve process at the service was made. Relying on the holding of *Arch Bay Holdings, LLC-Series 2010B v. Perez*, 2015 IL App (2d) 141117, they alleged that the defect in service deprived the foreclosure court of jurisdiction. The petition sought to vacate all the orders entered in the foreclosure as void *ab initio*, a declaration that they were the rightful owners of the Property and be restored to possession. In the

alternative they claimed they were entitled to restitution from PNC and the Current Owners for the period in which they were allegedly dispossessed of their Property.

The Current Owners and PNC moved to dismiss the petition. The Current Owners argued they were bona fide purchasers, and thus immune from any challenges to their title under section 2-1401(e) of the Code. The Current Owners and PNC argued that the Kuzmierzes' claims were barred by laches. The trial court agreed and granted the motions on these grounds.

The Kuzmierzes appealed. The Appellate Court affirmed ruling that the alleged jurisdictional defect was not apparent on the face of the record and therefore the Current Owners were entitled to the protection offered by section 2-1401(e) of the Code. As to PNC, the Appellate Court ruled that the claim was barred by laches as the Kuzmierzes delay in bringing the claim was unreasonable and it would be inequitable to permit relief against PNC under these circumstances. *PNC Bank, Nat'l Ass'n v. Kusmierz*, 2020 IL App (2d) 190521, ¶¶ 31-33.

The "Cottage Industry" Underlying This Case

The Kuzmierzes' attack on title to property that has passed through foreclosure many years ago to extort money from the plaintiff-mortgagee, the new owners, new mortgage holders and their title insurers is far from isolated. Indeed, in the lower court the trial judge discovered there were hundreds of these kinds of cases pending just in DuPage County at the time of the underlying proceedings. (SUP C 15: 7; 18: 18-23). These schemes are well known to the Appellate Courts as well. *See*, *e.g.*, *Federal National Mortgage Ass'n v. Altamirano*, 2020 IL App (2d) 190198; *JPMorgan Chase Bank, N.A. v. Robinson*, 2020 IL App (2d) 190275; *BankUnited, National Association v. Giusti,* 2020 IL App (2d)

190522; *Parkvale Savings Bank v. Taylor*, 2020 IL App (2d) 190820-U; *Ocwen Loan Servicing, LLC v. DeGomez*, 2020 IL App (2d) 190774; *Fed. Nat'l Mortgage Ass'n v. Khan*, 2021 IL App (2d) 190852-U; *Deutsche Bank, Nat'l Tr. Co. v. Gomez*, 2020 IL App (2d) 190728-U *Municipal Trust and Savings Bank v. Moriarty*, 2020 IL App (3d) 190016, appeal pending, 195 N.E.3d 95.

A "cottage legal industry" is driving these suits. As one Illinois lawmaker noted,

> the cottage industry that was talked about that has grown up … is now combing through old foreclosure decisions looking for technical deficiencies in the summons, reopening cases with an attempt to extort some sort of settlement under the threat of taking homes away from subsequent purchasers and returning them to the original foreclosure defendants. And they're doing it with obscene... really obscene sort of fee sharing arrangements. Some as much as an 80 percent contingency fee."

See, Illinois House Transcript, 2018 Reg. Sess. No. 141 (statement by Rep. Martwick in the debate on Senate Bill 2432, P.A. 100–1048 (discussed below). The victims in these cases, the current owners, the original plaintiff-mortgagees, the new mortgagees, and their title insurers have all long had some protection under Illinois statutory law from unseasonably late challenges to title. Most notable is the Marketable Title Act which largely, but not completely, bars any claim challenging title to real estate arising more than forty years prior. 735 ILCS 5/13-118. Also, section 2-1401(e) of the Code which provides:

> "(e) Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order or judgment but before the filing of the petition, nor affect any right of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment."

735 ILCS 5/2-1401(e).

More recently, in response to the *Arch Bay* decision and the very type of scheme

the Kuzmierzes tried to pull off here, the legislature took action by means of various legislative fixes to further limit the ability of long quiet mortgagors to upset foreclosure sales and to lessen the threats to land titles these cases posed. Specifically, in 2018, the Illinois Governor signed into law, P.A. 100-1048 (the "Legislation"), which, among other things, amended section 2–201 of the Code governing the forms of process to declare that "a court's jurisdiction is not affected by a technical error in format of a summons if the summons has been issued by a clerk of the court, the person or entity to be served is identified as a defendant on the summons, and the summons is properly served." 735 ILCS 5/2-201(c). The Legislation also added Sections 13-107.1 to the Code, which provides, in part:

> (a) Actions brought for the recovery of any lands, tenements, or hereditaments of which any person may be possessed for 2 successive years, having a connected title, deductible of record, as a purchaser at a judicial foreclosure sale, other than a mortgagee, who takes possession pursuant to a court order under the Illinois Mortgage Foreclosure Law, or a purchaser who acquires title from a mortgagee or a purchaser at a judicial foreclosure sale who received title and took possession pursuant to a court order, shall be brought within 2 years after possession is taken. When the purchaser acquires title and has taken possession, the limitation shall begin to run from the date a mortgagee or a purchaser at a judicial foreclosure sale takes possession pursuant to a court order under the Illinois Mortgage Foreclosure Law or Article IX of this Code. The vacation or modification, pursuant to the provisions of Section 2-1401, of an order or judgment entered in the judicial foreclosure does not affect the limitation in this Section."

735 ILCS 5/13-107.1.

The Legislation also added Section 13-109.1 to Article XIII. It provides:

> Every person in the actual possession of lands or tenements, under claim and color of title, as a purchaser at a judicial foreclosure sale, other than a mortgagee, who takes possession pursuant to a court order under the Illinois Mortgage Foreclosure Law, or a purchaser who acquires title from a mortgagee or a purchaser at a judicial foreclosure sale who received title and took possession pursuant to such a court order, and who for 2 successive

> years continues in possession, and also, during such time, pays all taxes legally assessed on the lands or tenements, shall be held and adjudged to be the legal owner of the lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, legacy, or descent, before such 2 years have expired, and who continue possession, and continue to pay the taxes as above set forth so as to complete the possession and payment of taxes for the term above set forth, are entitled to the benefit of this Section. The vacation or modification, pursuant to the provisions of Section 2-1401, of an order or judgment entered in the judicial foreclosure does not affect the limitation in this Section."

735 ILCS 5/13-109.1.

Finally, P.A. 100-1048 made it illegal under the Mortgage Rescue Fraud Act to "enter into, enforce, or act upon any agreement with a foreclosure defendant, whether the foreclosure is completed or otherwise, if the agreement provides for a division of proceeds between the foreclosure defendant and the distressed property consultant derived from litigation related to the foreclosure." 765 ILCS 940/50(a)(8).

ARGUMENT

A. THE CURRENT LEGISLATIVE FRAMEWORK LIMITING CHALLENGES TO TITLE ARE NOT ENOUGH AND ONLY LACHES CAN FILL THE GAP.

The protections for subsequent purchasers and the limitations on belated attacks on title these laws provide are broad, but they do not go far enough. Not every person is covered, and many situations fall outside the purview of these legislative protections resulting in inequity and prejudice. Only the long-recognized defense of laches fills the gap. It is in many cases it is the only defense a person has to a late challenge to one's title to or interest in real estate.

To illustrate these points, the limitations under the Marketable Title Act only apply to claims more than forty years old. 735 ILCS 5/13-118. And it is limited to cases where title was taken pursuant to a specific type of deed. *Davis v. Havana Mineral Wells, Inc.* 48

Ill.App.3d 996, 1000 (1977) (Marketable Title Act does not protect title taken by a tax deed).

Section 2-1401(e) of the Code protects only purchasers "for value of property obtained pursuant to a judgment" -- provided they were not parties to original action, they purchased the property before the filing of the petition, and the lack of jurisdiction was not affirmatively apparent in the record. Since it was a party to the underlying foreclosure means the plaintiff-mortgagee -- like PNC here -- has no protection under this section from the resurrection of a long-concluded foreclosure. Nor would section 2-1401 offer protection to a person who inherits, is gifted, or otherwise takes title to the property for no value. An heir or legatee who inherits the property would presumably not qualify for section 2-1401(e) immunity. There are also no protections under section 2-1401(e) for a person whose title was vested by a court decree but which was not acquired "under [a] certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment". *Id*. And, of course, if the challenge to the foreclosure is based on a lack of jurisdiction apparent from the record, as the Kuzmierzes alleged, section 2-1401(e) does not protect a subsequent purchaser either.

As commendable as the Legislation "fixes" are, they are also limited, at least in protecting mortgage lenders or other persons who may not qualify for the protections and limitations they offer. These sections apply only to challenges brought more than two years after a foreclosure sale. See 735 ILCS 5/13-107.1; 13-109.1. So in situations where the lack of jurisdiction relates to a putative defect in, as it was in this case, the triggering event would have occurred well before the foreclosure sale, maybe three or four years before the sale.

Moreover, these laws apply only to those cases where title was transferred from the mortgagee or a purchaser at a judicial sale and where the person against whom the claim is brought has possession of the real estate. *See*, 735 ILCS 5/13-107.1 ("… of which any person may be possessed …"); 13-109.1 ("Every person in the actual possession of lands…"). This means section 13-107.1 and 13-109.1 would not apply where title had been transferred by means of a deed in lieu or consent foreclosure. These sections would also not apply where title was transferred by other means such as a quiet title or partition action (735 ILCS 5/17-101 *et seq.*). *See*, *again*, 735 ILCS 5/13-107.1; 13-109.1 (applies only to actions where a court order was entered under the Illinois Mortgage Foreclosure Act or Article IX). For the same reason they would they apply to levy sales (735 ILCS 5/12-114) or the foreclosure of mechanics liens (770 ILCS 60/1 *et seq.*) or other liens on real estate. And of particular concern to Amicus, they expressly do not protect mortgagees who have taken title by sheriff's deed in a foreclosure proceeding.

Laches, in contrast, "is an equitable principle which bars recovery by a litigant whose unreasonable delay in bringing an action for relief prejudices the rights of the other party." *First National Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill.2d 353, 364 (1997) (quoting *People ex rel. Daley v. Strayhorn*, 121 Ill.2d 470, 482 (1988)). It "is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party." *Tully v. State*, 143 Ill.2d 425, 432 (1991). Laches may apply although the time fixed by the statute of limitations has not expired. *Sundance Homes, Inc. v. County of DuPage*, 195 Ill.2d 257, 270 (2001); *Fed. Nat'l Mortg. Ass'n v. Altamirano*, 2020 IL App (2d) 190198, ¶ 24. Unlike a statute of limitations, "laches is not a mere matter of time but principally a question of

the inequity of permitting the claim to be enforced, — an inequity founded upon some change in the condition or relation of the property and the parties." *Holland v. Richards*, 4 Ill.2d 570, 578 (1955).

This Court has long recognized that "laches is a familiar defense when the validity of an earlier judgment or decree has been attacked." *James v. Frantz*, 21 Ill.2d 377, 383 (1961), citing *Wright v. Simpson*, 200 Ill. 56, 65 (1902); *Elieff v. Lincoln Nat. Life Ins. Co.*, 369 Ill. 408, 415 (1938); *Koberlein v. First Nat. Bank of St. Elmo*, 376 Ill. 450, 456–57 (1941). It is true that in *Thayer v. Village of Downers Grove*, 369 Ill. 334 (1938), this Court made a broad statement that laches is not an available to an attack on a void judgment. *Id*. at 339. But this Court later acknowledged in *James* that this statement was "too sweeping". 21 Ill.2d at 383. This acknowledgement was based on "black letter law", section 129 of the Restatement (First) on Judgments, that laches is a defense to an attack on a void judgment. *Id*. at 383. Thus, in *James* this Court affirmed that laches can be raised as a defense to a claim alleging there was a void judgment. *James*, 21 Ill.2d at 383. Since *James*, this Court has twice held that laches was a proper defense to a claim based on a void judgment, including, in claims just like the one raised here which resulted in a conveyance of title. See *Shapiro v. Grosby*, 25 Ill.2d 245, 249 (1962) ("The fact, therefore, that the deeds were defective or void as conveyances is of no consequence" *** "Dismissal of the complaint was also proper on the ground of laches."); *Miller v. Siwicki,* 8 Ill.2d 362 (1956) (where the Court denied a claim for ejectment on the basis that the deed was void for failure to show that service was properly made. "In our opinion" it held, "it is not necessary to determine these questions, for we believe the plaintiff is barred by laches from attacking the validity of that deed." *Id*. at 365).

Thus, the present state of the law in Illinois is that laches is a valid defense to claims challenging a judgment as void. *See*, *Federal National Mortgage Ass'n v. Altamirano*, 2020 IL App (2d) 190198 (laches applied to bar a claim attacking a foreclosure judgment despite the purported voidness of the judgment); *Ocwen Loan Servicing, LLC v. DeGomez*, 2020 IL App (2d) 190774 (laches will bar a claim attacking a foreclosure judgment based on defective service); *see also*, *JPMorgan Chase Bank, N.A. v. Robinson*, 2020 IL App (2d) 190275 (recognizing, in dicta, that laches can preclude relief from a void judgment where prejudice is demonstrated); *BankUnited, National Association v. Giusti,* 2020 IL App (2d) 190522 (same).

B. REVERSING SIXTY YEARS OF PRECEDENT BY ELIMINATING LACHES AS A DEFENSE TO BELATED CHALLENGES TO TITLE BASED ON A VOID JUDGMENT MAY CLOUD TITLE TO PROPERTIES FOR YEARS.

Should the Court change the law and hold that laches is not available as a defense to a claim asserting that the underlying judgment is void, or is only available to equitable claims, not legal claims, the result would be to cloud title on many properties for decades. It would also likely incentivize claimants to wait to bring their petition until the property is transferred to a third party and new mortgage loan is taken, to maximize the complexity and to avoid a simple unwinding the foreclosure where they would be re-foreclosed.

Additionally, if long dormant claims are not challengeable under laches, regardless of their merit, it would threaten the title to many properties and the superiority of mortgage liens going back forty years or more. Where the party is not covered or the circumstance does not allow the application of the statutory protections and limitations, many owners and lien holders would face the serious prospect that a judgment farther down the chain of title may be void and the subsequent judicial sale based on that judgment invalid, leaving

them with clouded title and the legitimate risk that their title and lien interests are not secured. Indeed, the spate of cases filed in the wake of *Arch Bay Holdings* which the trial judge observed shows that this risk is real.

Further, if laches is eliminated as a defense to such claims, it would harm the ability of prospective sellers of such properties and new buyers, and the lenders to whom they look to finance real estate purchasers, to obtain title insurance policies without exclusions for the risk associated with void judgments underlying transfers of title. In other words, the risk of insuring such properties will cause title insurers to balk at or increase the cost of title insurance coverage. As one author explained:

> "With clouded titles, subsequent purchasers of any of these properties…will not be able to obtain title insurance without specific exemptions, and in turn, they will also not be able to obtain financing… When the investor [i.e. foreclosing mortgagee] attempts to resell the property to a subsequent purchaser, they will have a problem. In this scenario, a prudent lender [to the subsequent purchaser] will require additional title insurance endorsements as protection against clouded title issues. Title companies will not offer these endorsements and, when the subsequent purchaser's loan falls apart, the investor will be stuck with the property unless he/she can find another cash buyer or file an expensive and lengthy quiet title action. Also, if the investor attempts to sell the property, he/she faces liability including, but not limited to, contract rescission due to state disclosure statutes. Time will prove that the purchase of many foreclosures (at any price) was a foolish investment."[1]

This case, and the over two hundred cases like it, prove these concerns are real and counsel in favor of preserving the defense of laches to such claims.

C. THE INSTANT CASE ILLUSTRATES WHY THE LACHES DEFENSE MUST REMAIN AVAILABLE TO PROTECT AGAINST BELATED CHALLENGES TO TITLE.

The instant case is a perfect illustration of the limitation of the various statutory

[1] David E. Woolley & Lisa D. Herzog, MERS: The Unreported Effects of Lost Chain of Title on Real Property Owners, 8 Hastings Bus. L.J. 365, 394-395 (2012).

protections. Other than prevailing on the merits of Kuzmierzes' claim that service was defective, PNC's sole defense was that the claim was barred by laches because of the prejudice it incurred by the Kuzmierzes' delay in bringing the challenge. The trial court and Appellate Court were correct in holding that laches barred the claim.

As the Courts' below found, the Kuzmerizes do not dispute that they were served with the summons and were aware of the foreclosure; in fact, they concede it. The Kuzmerizes had actual knowledge of the foreclosure since April 1, 2011, but took no action for more than seven years, until September 12, 2018 when they brought their petition. The record shows no reasonable explanation for this delay, other than to avoid having the foreclosure unwound. Instead, they waited to act until after title had transferred and after the Property had been substantially improved and maintained the Property. The harm to Current Owners is obvious but PNC was harmed as well. Because it could not unwind the foreclosure and re-foreclose the Kuzmerizes interests, it made it impossible to restore PNC to the position it held prior to the sale. In addition, by waiting seven years to act, they drove up the monetary relief they sought against PNC. The delay in bringing their claim and the prejudice to all the parties makes this a textbook example of why laches should remain viable as a defense, even to claims challenging a void judgment.

CONCLUSION

For the reasons stated in this brief, the IMBA, as *Amicus Curiae*, respectfully requests that this Court unequivocally affirm its holding in *James v. Frantz* that the equitable doctrine of *laches* is a valid defense to attack on a void judgment. 21 Ill.2d at 383, 172 N.E.2d at 798, and with affirm the judgments of Courts below.

Respectfully submitted,

/s/ Solomon Maman
One of the Attorneys for the
Illinois Mortgage Bankers Association

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14 pages.

/s/ Solomon Maman
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NOTICE OF FILING

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On May 13, 2021, I caused to be electronically filed with the Clerk of the Supreme Court of Illinois, 200 E. Capitol, Springfield, IL 62701 the attached ILLINOIS MORTGAGE BANKERS ASSOCIATION'S *AMICUS CURIAE* BRIEF.

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CERTIFICATION AND PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct.

The undersigned certifies, deposes and says upon oath that the undersigned caused to be served a copy of the Notice of Filing together with true and accurate copies of the above stated instruments upon the named parties at said addresses via the Odyssey electronic filing system via email on May 13, 2021.

/s/ Solomon Maman
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