CASE LAW

Patton v. Diemer, 35 Ohio St. 3d 68; 518 N.E.2d 941; 1988). A judgment rendered by a court lacking subject matter jurisdiction is void ab initio. Consequently, the authority to vacate a void judgment is not derived from Ohio R. Civ. P. 60(B), but rather constitutes an inherent power possessed by Ohio courts. I see no evidence to the contrary that this would apply to ALL courts.

"A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of the action. *Lebanon Correctional Institution v. Court of Common Pleas* 35 Ohio St.2d 176 (1973).

"A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of an action." *Wells Fargo Bank, v. Byrd*, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722 (2008). It went on to hold, " If plaintiff has offered no evidence that it owned the note and mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law"

(The following court case was unpublished and hidden from the public) Wells *Fargo, Litton Loan v. Farmer*, 867 N.Y.S.2d 21 (2008). "Wells Fargo does not own the mortgage loan… Therefore, the… matter is dismissed with prejudice."

(The following court case was unpublished and hidden from the public) *Wells Fargo v. Reyes*, 867 N.Y.S.2d 21 (2008). Dismissed with prejudice, Fraud on Court & Sanctions. Wells Fargo never owned the Mortgage.

(The following court case was unpublished and hidden from the public) *Deutsche Bank v. Peabody*, 866 N.Y.S.2d 91 (2008). EquiFirst, when making the loan, violated Regulation Z of the Federal Truth in Lending Act 15 USC §1601 and the Fair Debt Collections Practices Act 15 USC §1692; "intentionally created fraud in the factum" and withheld from plaintiff… "vital information concerning said debt and all of the matrix involved in making the loan".

(The following court case was unpublished and hidden from the public) *Indymac Bank v. Boyd*, 880 N.Y.S.2d 224 (2009). To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and the mortgage note. It is the law's policy to allow only an aggrieved person to bring a lawsuit . . . A want of "standing to sue," in other words, is just another way of saying that this particular plaintiff is not involved in a genuine controversy, and a simple syllogism takes us from there to a "jurisdictional" dismissal:

(The following court case was unpublished and hidden from the public) *Indymac Bank v. Bethley*, 880 N.Y.S.2d 873 (2009). The Court is concerned that there may be fraud on the part of plaintiff or at least malfeasance Plaintiff INDYMAC (Deutsche) and must have "standing" to bring this action.

(The following court case was unpublished and hidden from the public) *Deutsche Bank National Trust Co v.Torres*, NY Slip Op 51471U (2009). That "the dead cannot be sued" is a well established principle of the jurisprudence of this state plaintiff's second cause of action for declaratory relief is denied. To be entitled to a default judgment, the movant must establish, among other things, the existence of facts which give rise to viable claims against the defaulting defendants. "The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and punish them for violations of their corporate charters, and it probably is not invoked too often… " *Zinc Carbonate Co. v. First National Bank*, 103 Wis. 125, 79 NW 229 (1899). Also see: American Express Co. v. Citizens State Bank, 181 Wis. 172, 194 NW 427 (1923).

(The following court case was unpublished and hidden from the public) Wells Fargo v. Reyes, 867 N.Y.S.2d 21 (2008). Case dismissed with prejudice, fraud on the Court and Sanctions because Wells Fargo never owned the Mortgage.

(The following court case was unpublished and hidden from the public) *Wells Fargo, Litton Loan v. Farmer*, 867 N.Y.S.2d 21 (2008). Wells Fargo does not own the mortgage loan. "Indeed, no more than (affidavits) is necessary to make the prima facie case." *United States v. Kis*, 658 F.2d, 526 (7th Cir. 1981).

(The following court case was unpublished and hidden from the public) *Indymac Bank v. Bethley*, 880 N.Y.S.2d 873 (2009). The Court is concerned that there may be fraud on the part of plaintiff or at least malfeasance Plaintiff INDYMAC (Deutsche) and must have "standing" to bring this action.

Lawyer responsible for false debt collection claim Fair Debt Collection Practices Act, 15 USCS §§ 1692-1692o, Heintz v. Jenkins, 514 U.S. 291; 115 S. Ct. 1489, 131 L. Ed. 2d 395 (1995). and FDCPA Title 15 U.S.C. sub section 1692.

In determining whether the plaintiffs come before this Court with clean hands, the primary factor to be considered is whether the plaintiffs sought to mislead or deceive the other party, not whether that party relied upon plaintiffs' misrepresentations. *Stachnik v. Winkel*, 394 Mich. 375, 387; 230 N.W.2d 529, 534 (1975).

"Indeed, no more than (affidavits) is necessary to make the prima facie case." United States v. Kis, 658 F.2d, 526 (7th Cir. 1981). Cert Denied, 50 U.S. L.W. 2169; S. Ct. March 22, (1982).

"Silence can only be equated with fraud where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading." *U.S. v. Tweel*, 550 F.2d 297 (1977).

"If any part of the consideration for a promise be illegal, or if there are several considerations for an un-severable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." *Menominee River Co. v. Augustus Spies L & C Co.*, 147 Wis. 559 at p. 572; 132 NW 1118 (1912).

Federal Rule of Civil Procedure 17(a)(1) which requires that "[a]n action must be prosecuted in the name of the real party in interest." See also, In re *Jacobson*, 402 B.R. 359, 365-66 (Bankr. W.D. Wash. 2009); In re *Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008).

Mortgage Electronic Registration Systems, Inc. v. Chong, 824 N.Y.S.2d 764 (2006). MERS did not have standing as a real party in interest under the Rules to file the motion… The declaration also failed to assert that MERS, FMC Capital LLC or Homecomings Financial, LLC held the Note.

Landmark National Bank v. Kesler, 289 Kan. 528, 216 P.3d 158 (2009). "Kan. Stat. Ann. § 60-260(b) allows relief from a judgment based on mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence that could not have been timely discovered with due diligence; fraud or misrepresentation; a void judgment; a judgment that has been satisfied, released, discharged, or is no longer equitable; or any other reason justifying relief from the operation of the judgment. The relationship that the registry had to the bank was more akin to that of a straw man than to a party possessing all the rights given a buyer." Also In September of 2008, A California Judge ruling against MERS concluded, "There is no evidence before the court as to who is the present owner of the Note. The holder of the Note must join in the motion."

LaSalle Bank v. Ahearn, 875 N.Y.S.2d 595 (2009). Dismissed with prejudice. Lack of standing.

Novastar Mortgage, Inc v. Snyder 3:07CV480 (2008). Plaintiff has the burden of establishing its standing. It has failed to do so.

DLJ Capital, Inc. v. Parsons, CASE NO. 07-MA-17 (2008). A genuine issue of material fact existed as to whether or not appellee was the real party in interest as there was no evidence on the record of an assignment. Reversed for lack of standing.

Everhome Mortgage Company v. Rowland, No. 07AP-615 (Ohio 2008). Mortgagee was not the real party in interest pursuant to Rule 17(a). Lack of standing.

In *Lambert v. Firstar Bank*, 83 Ark. App. 259, 127 S.W. 3d 523 (2003), complying with the Statutory Foreclosure Act does not insulate a financial institution from liability and does not prevent a party from timely asserting any claims or defenses it may have concerning a mortgage foreclosure A.C.A. §18-50-116(d)(2) and violates honest services Title 18 Fraud. Notice to credit reporting agencies of overdue payments/foreclosure on a fraudulent debt is defamation of character and a whole separate fraud.

A Court of Appeals does not consider assertions of error that are unsupported by convincing legal authority or argument, unless it is apparent without further research that the argument is well taken. FRAUD is a point well taken! *Lambert Supra*.

No lawful consideration tendered by Original Lender and/or Subsequent Mortgage and/or Servicing Company to support the alleged debt. "A lawful consideration must exist and be tendered to support the Note" and demand under TILA full disclosure of any such consideration. *Anheuser-Busch Brewing Company v. Emma Mason*, 44 Minn. 318, 46 N.W. 558 (1890).

"It has been settled beyond controversy that a national bank, under Federal law, being limited in its power and capacity, cannot lend its credit by nor guarantee the debt of another. All such contracts being entered into by its officers are ultra vires and not binding upon the corporation." It is unlawful for banks to loan their deposits. *Howard & Foster Co. vs. Citizens National Bank*, 133 S.C. 202, 130 S.E. 758 (1926),

"Neither, as included in its powers not incidental to them, is it a part of a bank's business to lend its credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics . . . Indeed, lending credit is the exact opposite of lending money, which is the real business of a bank, for while the latter creates a liability in favor of the bank, the former gives rise to a liability of the bank to another. *I Morse. Banks and Banking* 5th Ed. Sec 65; *Magee, Banks and Banking*, 3rd Ed. Sec 248." *American Express Co. v. Citizens State Bank*, 181 Wis. 172, 194 NW 427 (1923). I demand under TILA full disclosure and proof to the contrary.

UCC § 2-106(4) "**Cancellation**" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

"There is no doubt but what the law is that a national bank cannot lend its credit or become an accommodation endorser." *National Bank of Commerce v. Atkinson,* 55 F. 465; (1893).

National Banks and/or subsidiary Mortgage companies cannot retain the note, "Among the assets of the state bank were two notes, secured by mortgage, which could not be transferred to the new bank as assets under the National Banking Laws. National Bank Act, Sect 28 & 56" *National Bank of Commerce v. Atkinson,* 8 Kan. App. 30, 54 P. 8 (1898).

"A bank can lend its money, but not its credit." *First Nat'l Bank of Tallapoosa v. Monroe,* 135 Ga 614, 69 S.E. 1123 (1911).

It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations." *Whipp v. Iverson,* 43 Wis. 2d 166, 168 N.W.2d 201 (1969).

"A bank is not the holder in due course upon merely crediting the depositors account." *Bankers Trust v. Nagler,* 23 A.D.2d 645, 257 N.Y.S.2d 298 (1965).

"Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." (The seller or lender) "He is liable, not upon any idea of benefit to himself, but because of his wrongful act and the consequent injury to the other party." *Leonard v. Springer,* 197 Ill 532. 64 NE 299 (1902).

"If any part of the consideration for a promise be illegal, or if there are several considerations for an un-severable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." *Menominee River Co. v. Augustus Spies L & C Co.,*147 Wis. 559 at p. 572; 132 NW 1118 (1912).

"The contract is void if it is only in part connected with the illegal transaction and the promise single or entire." *Guardian Agency v. Guardian Mut. Savings Bank,* 227 Wis. 550, 279 NW 79 (1938).

"It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a

bargain induced by such representations." *Whipp v. Iverson,* 43 Wis.2d 166, 279 N.W. 79 (1938).

In a Debtor's RICO action against its creditor, alleging that the creditor had collected an unlawful debt, an interest rate (where all loan charges were added together) that exceeded, in the language of the RICO Statute, "twice the enforceable rate." The Court found no reason to impose a requirement that the Plaintiff show that the Defendant had been convicted of collecting an unlawful debt, running a "loan sharking" operation. The debt included the fact that exaction of a usurious interest rate rendered the debt unlawful and that is all that is necessary to support the Civil RICO action. *Durante Bros. & Sons, Inc. v. Flushing Nat 'l Bank,* 755 F.2d 239 (1985). Cert. denied, 473 U.S. 906 (1985).

The Supreme Court found that the Plaintiff in a civil RICO action need establish only a criminal "violation" and not a criminal conviction. Further, the Court held that the Defendant need only have caused harm to the Plaintiff by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the Plaintiff need not demonstrate that the Defendant is an organized crime figure, a mobster in the popular sense, or that the Plaintiff has suffered some type of special Racketeering injury; all that the Plaintiff must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to affect the congressional purpose as broadly formulated in the Statute. *Sedima, SPRL v. Imrex Co.,* 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985).

A violation such as not responding to the TILA rescission letter, no matter how technical, it has no discretion with respect to liability. Holding that creditor failed to make material disclosures in connection with loan. Title 15 USCS §1605(c) *Wright v. Mid-Penn Consumer Discount Co.,* 133 B.R. 704 (Pa. 1991).

Moore v. Mid-Penn Consumer Discount Co., Civil Action No. 90-6452 U.S. Dist. LEXIS 10324 (Pa. 1991). The court held that, under TILA's Regulation Z, 12 CFR §226.4 (a), a lender had to expressly notify a borrower that he had a choice of insurer.

Marshall v. Security State Bank of Hamilton, 121 B.R. 814 (Ill. 1990) violation of Federal Truth in Lending 15 USCS §1638(a)(9), and Regulation Z. The bank took a security interest in the vehicle without disclosing the security interest.

Steinbrecher v. Mid-Penn Consumer Discount Co., 110 B.R. 155 (Pa. 1990). Mid-Penn violated TILA by not including in a finance charge the debtors' purchase of fire insurance on their home. The purchase of such insurance was a condition imposed by the company. The cost of the insurance was added to the amount financed and not to the finance charge.

Nichols v. Mid-Penn Consumer Discount Co., 1989 WL 46682 (Pa. 1989). Mid-Penn misinformed Nichols in the Notice of Right to Cancel Mortgage.

McElvany v. Household Finance Realty Corp., 98 B.R. 237 (Pa. 1989). debtor filed an application to remove the mortgage foreclosure proceedings to the United States District Court pursuant to 28 USCS §1409. It is strict liability in the sense that absolute compliance is required and even technical violations will form the basis for liability. *Lauletta v. Valley Buick Inc.*, 421 F. Supp. 1036 at 1040 (Pa. 1976).

Johnson-Allen v. Lomas and Nettleton Co., 67 B.R. 968 (Pa. 1986). Violation of Truth-in-Lending Act requirements, 15 USCS §1638(a)(10), required mortgagee to provide a statement containing a description of any security interest held or to be retained or acquired. Failure to disclose.

Cervantes v. General Electric Mortgage Co., 67 B.R. 816 (Pa. 1986). creditor failed to meet disclosure requirements under the Truth in Lending Act, 15 U.S.C.S. § 1601-1667c and Regulation Z of the Federal Reserve Board, 12 CFR §226.1

McCausland v. GMAC Mortgage Co., 63 B.R. 665, (Pa. 1986). GMAC failed to provide information which must be disclosed as defined in the TILA and Regulation Z, 12 CFR §226.1

Perry v. Federal National Mortgage Corp., 59 B.R. 947 (Pa. 1986) the disclosure statement was deficient under the Truth In Lending Act, 15 U.S.C.S. § 1638(a)(9). Defendant Mortgage Co. failed to reveal clearly what security interest was retained.

Schultz v. Central Mortgage Co., 58 B.R. 945 (Pa. 1986). The court determined creditor mortgagor violated the Truth In Lending Act, 15 U.S.C.S. § 1638(a)(3), by its failure to include the cost of mortgage insurance in calculating the finance charge. The court found creditor failed to meet any of the conditions for excluding such costs and was liable for twice the amount of the true finance charge.

Solis v. Fidelity Consumer Discount Co., 58 B.R. 983 (Pa. 1986). Any misgivings creditors may have about the technical nature of the requirements should be addressed to Congress or the Federal Reserve Board, not the courts. Disclosure requirements for credit sales are governed by 15 *U.S.C.S.* § 1638 12 *CFR* § 226.8(b), (c). Disclosure requirements for consumer loans are governed by 15 *U.S.C.S.* § 1639 12 *CFR* § 226.8(b), (d). A violator of the disclosure requirements is held to a standard of strict liability. Therefore, a plaintiff need not show that the creditor in fact deceived him by making substandard disclosures. Since Transworld Systems Inc. have not cancelled the security interest and return all monies paid by Ms. Sherrie I. LaForce within the 20 days of receipt of the letter of rescission of

October 7, 2009, the lenders named above are responsible for actual and statutory damages pursuant to 15 *U.S.C.* 1640(a).

Lewis v. Dodge, 620 F.Supp. 135, 138 (D. Conn. 1985);

Porter v. Mid-Penn Consumer Discount Co., 961 F.2d 1066 (3rd Cir. 1992). Porter filed an adversary proceeding against appellant under 15 U.S.C. §1635, for failure to honor her request to rescind a loan secured by a mortgage on her home.

Rowland v. Magna Millikin Bank of Decatur, N.A., 812 F.Supp. 875 (1992) Even technical violations will form the basis for liability. The mortgagors had a right to rescind the contract in accordance with 15 U.S.C. §1635(c).

New Maine Nat. Bank v. Gendron, 780 F.Supp. 52 (1992). The court held that defendants were entitled to rescind loan under strict liability terms of TILA because plaintiff violated TILA's provisions.

Dixon v. S & S Loan Service of Waycross, Inc., 754 F.Supp. 1567 (1990); TILA is a remedial statute, and, hence, is liberally construed in favor of borrowers. The remedial objectives of TILA are achieved by imposing a system of strict liability in favor of consumers when mandated disclosures have not been made. Thus, liability will flow from even minute deviations from the requirements of the statute and the regulations promulgated under it.

Woolfolk v. Van Ru Credit Corp., 783 F.Supp. 724 (1990) There was no dispute as to the material facts that established that the debt collector violated the FDCPA. The court granted the debtors' motion for summary judgment and held that (1) under 15 *U.S.C.* §1692(e), a debt collector could not use any false, deceptive, or misleading representation or means in connection with the collection of any debt; Unfair Debt Collection Practices Act.

Jenkins v. Landmark Mortg. Corp. of Virginia, 696 F.Supp. 1089 (W.D. Va. 1988). Plaintiff was also misinformed regarding the effects of a rescission. The pertinent regulation states that "when a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge." 12 *CFR* §226.23(d) (1)..

Laubach v. Fidelity Consumer Discount Co., 686 F.Supp. 504 (E.D. Pa. 1988). monetary damages for the plaintiffs pursuant to the *Racketeer Influenced and Corrupt Organization Act,* 18 *USC* §1961. (Count I); the Truth-in-Lending Act, 15 *USC* §1601.

Searles v. Clarion Mortg. Co., 1987 WL 61932 (E.D. Pa. 1987); Liability will flow from even minute deviations from requirements of the statute and Regulation Z. failure to accurately disclose the property in which a security interest was taken in

connection with a consumer credit transaction involving the purchase of residential real estate in violation of 15 *USC*s §1638(a)(9). and 12 *CFR* §226.18(m).

Dixon v. S & S Loan Service of Waycross, Inc., 754 F.Supp. 1567, 1570 (S.D. Ga. 1990). Congress's purpose in passing the *Truth in Lending Act* (TILA), 15 *USC*s §1601(a). was to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him. 15 *USC*s §1601(a). TILA is a remedial statute, and, hence, is liberally construed in favor of borrowers.;

Shroder v. Suburban Coastal Corp., 729 F.2d 1371, 1380 (11th Cir. 1984). disclosure statement violated 12 CFR §226.6(a).,

Wright v. Mid-Penn Consumer Discount Co., 133 B.R. 704 (E.D. Pa. 1991) Holding that creditor failed to make material disclosures in connection with one loan;

Cervantes v. General Electric Mortgage Co., 67 B.R. 816 (E.D. Pa. 1986). The court found that the TILA violations were governed by a strict liability standard, and defendant's failure to reveal in the disclosure statement the exact nature of the security interest violated the TILA.

Perry v. Federal National Mortgage, 59 B.R. 947 (E.D. Pa. 1986). defendant failed to accurately disclose the security interest taken to secure the loan.

Porter v. Mid-Penn Consumer Discount Co., 961 F.2d 1066 (3rd Cir. 1992). Adversary proceeding against appellant under 15 *U.S.C.* §1635, for failure to honor her request to rescind a loan secured by a mortgage on her home. She was entitled to the equitable relief of rescission and the statutory remedies under 15 *U.S.C.* §1640 for appellant's failure to rescind upon request.

Solis v. Fidelity Consumer Discount Co., 58 B.R. 983 (Pa. 1986). Any misgivings creditors may have about the technical nature of the requirements should be addressed to Congress or the Federal Reserve Board, not the courts. Disclosure requirements for credit sales are governed by 15 *U.S.C.S.* § 1638 12 *CFR* § 226.8(b), (c). Disclosure requirements for consumer loans are governed by 15 *U.S.C.S.* § 1639 12 *CFR* § 226.8(b), (d). A violator of the disclosure requirements is held to a standard of strict liability. Therefore, a plaintiff need not show that the creditor in fact deceived him by making substandard disclosures. *Rowland v. Magna Millikin Bank of Decatur,* N.A., 812 F.Supp. 875 (1992),

Even technical violations will form the basis for liability. The mortgagors had a right to rescind the contract in accordance with 15 *U.S.C.* §1635(c). *New Maine Nat. Bank v. Gendron,* 780 F.Supp. 52 (D. Me. 1992). The court held that

defendants were entitled to rescind loan under strict liability terms of TILA because plaintiff violated TILA's provisions.