

IN THE SUPREME COURT OF FLORIDA

SAMUIEL K. MESSIHA, ) Florida Supreme Court Case No.: SC14-1335

) DCA CASE NO.: 1D13-3608

Defendant/Petitioner, ) Lower Tribunal Case No.: 2012 CA 004091

vs. )

FIRST FLORIDA CREDIT UNION,)

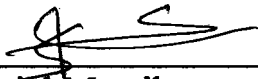
Plaintiff/Respondent. )

\_\_\_\_\_ )

FILED  
JOHN A. TOMASINO  
2014 SEP -3 P 1:07  
CLERK, SUPREME COURT  
BY \_\_\_\_\_

AMENDED PETITIONER'S INITIAL BRIEF ON JURISDICTION

(PETITION TO INVOKE DISCRETIONARY JURISDICTION OF FLORIDA  
SUPREME COURT FROM FIRST DISTRICT COURT OF APPEAL)

  
\_\_\_\_\_  
Samuel Messiha  
Defendant/Petitioner  
2656 Bantry Bay Drive  
Tallahassee, FL 32309  
(850) 668-0796

**Table of Contents**

TABLE OF CITATIONS .....	3
Other Authorities .....	3
STATEMENT OF THE CASE AND OF THE FACTS .....	4
STANDARD OF REVIEW.....	7
SUMMARY OF ARGUMENT.....	9
CONCLUSION .....	10
CERTIFICATE OF SERVICE.....	11
CERTIFICATE OF TYPE SIZE.....	12

## **TABLE OF CITATIONS**

“Freedman v. Fraser Eng’g & Testing, Inc., 927 So. 2d 949, 954 (Fla. 4th DCA 2006)”.

Mona Lisa at Celebration, LLC, Bkrtcy.M.D.Fla.2010, and 436 B.R. 179.

State v. Rowe, 149 Fla. 494, 6 So.2d 267 (1942).

### **Other Authorities**

Fla.R.App.Pro. 9.310.

RULE 9.310. STAY PENDING REVIEW

Rule 26 Duty to Disclose; General Provisions Governing Discovery (iii)

Rule 34 make available for inspection and copying the documents.

RULE 9.310. STAY PENDING REVIEW (Fla.R.App.Pro. 9.310.)

494.0078m. “Florida Fair Lending Act.”

<http://www.flsenate.gov/Laws/Statutes/2011/494.0078>

2011 Florida Statutes 494.0078 (1), (2a)

Florida Statute 718.506

Florida Statute 641.441

Florida Bar Rule 4-3.3

Florida Statute 443.071

Florida Rule of Civil Procedure 1.120

Florida Statute 440.105

Florida Statute Section 817.2341

Florida Bar Rule 4-4

Florida Statute 633.819

Florida Statute 837.021

Florida Statute 634.336

Florida Statute 817.59

### **STATEMENT OF THE CASE AND OF THE FACTS**

The Appellant Samuiel Messiha owned the subject building lot since 1996. It was free and clear till 2007. On August 2007, the Appellant Samuiel Messiha had to refinance the building lot to pay off his divorce's expenses. The Appellee First Florida Credit Union **insisted** on the appellant paying for their appraiser to appraise the lot. The Appellee First Florida Credit Union would not accept any appraisal from any independent appraiser.

The Lot was appraised at **\$150,000**. The Appellee First Florida Credit Union approved the Lot's Mortgage of **\$120,000** (80% of the appraised value) with annual interest rate of 9.045%. The Appellant Samuiel Messiha was religiously paying more than the scheduled minimum payments. The Appellant Samuiel Messiha paid off the principle down to

\$92,470.96. On January 15<sup>th</sup>, 2012, the Appellant Samuiel Messiha lost his job at age 63. The Appellant kept paying the mortgage till April 2012 when his savings ran out. The Appellant tried hard to sell the land and he could not because it was appraised over the market value by The Appellee's appraiser. The Appellee First Florida Credit Union was abusing the act known as "**Florida Fair Lending Act.**" One of the most common forms of abusive lending is the making of loans that are equity-based rather than income-based. (2011 Florida Statutes 494.0078 (1), (2a)).

The Appellant Samuiel Messiha is one of the hardest hit of current economy. Without a job and income; The Appellant cannot afford to hire a lawyer to represent him in this matter. On 07/17/2013 hearing, The Appellant Samuiel Messiha was surprised by The Appellee First Florida Credit Union's lawyer submitted to the court their prepared SUMMARY FINAL JUDGMENT OF FORECLOSURE ( July 18, 2013) only one copy to the lower court Honorable Judge during the hearing that day, without the knowledge of the Appellant Samuiel Messiha. There was no conferring or given time to review it by the Appellant Samuiel Messiha. The Appellee First Florida Credit Union's lawyers were violating "**Rule 26 and Duty to Disclose; General Provisions Governing Discovery (iii)**" and **Rule 34**. The Appellee First Florida Credit Union's lawyers submitted false documentation "SUMMARY FINAL JUDGMENT OF FORECLOSURE" contains

exponential interest (16,513.79) without any record to support. The lower court Honorable Judge signed the order with this **false** statement about the interest. The interest went viral out of control from \$7,690.19 on March 4, 2013 to \$13,435.79 on June 26, 2013 with increase of 75% in four month and twenty two days. Appellee First Florida Credit Union provided this information in bad faith causing **obstruction of justice**. On July 26th, 2013 a NOTICE OF APPEAL (July 26, 2013) was filed by Appellant Samuel Messiha in The First District of Appeal and serviced to The Appellee First Florida Credit Union. Under **Rule 9.310**, Lower Court has jurisdiction to issue a stay pending appeal. On August 19th, 2013 First Florida Credit Union auctioned the lot in the Leon county court house and bought it back with very ridicules price of \$6,000 ignoring the NOTICE OF APPEAL and **violating** the **RULE 9.310. STAY PENDING REVIEW (Fla.R.App.Pro. 9.310.)**.

The First District Court of Appeal accepted Appellee First Florida Credit Union **hearsay** of error in calculating the interest charged to Appellant Pro Se Samuel Messiha without any evidence to support it. Opinion filed May 12, 2014 (**Exhibit A**). Appellee First Florida Credit Union argues that the interest charged to appellant was a clerical mistake this argument is unpersuasive for very simple reasons: There was no record reflects how the error was made; Appellee First Florida Credit Union never provided the name of the

person(s) who done these calculations of interest; Appellee First Florida Credit Union never provided the qualifications of the person(s) who done these calculations of interest; Appellee First Florida Credit Union never provided the wrong calculations of the interest as a record for this case.

### **STANDARD OF REVIEW**

There are numerous situations in Florida law which include, but are not limited to the following, all of which dealing with false material statement.

1. **Florida Statute 718.506** dealing with condominiums and regulations for disclosure prior to sale provides for the rescission of condominium purchase agreements where a purchaser relied upon a developer's **false** material statement. Also see in re Mona Lisa at Celebration, LLC, Bkrcty.M.D.Fla.2010, and 436 B.R. 179.
2. False testimony in divorce action has been sufficient for prosecution of perjury where the same was material. State v. Rowe, 149 Fla. 494, 6 So.2d 267 (1942).
3. **Florida Statute 641.441** dealing with unfair methods of competition in healthcare services prohibits making a **false** entry of a material fact.
4. **Standard 6.1** of the Standards for Imposing Lawyer Sanctions condemns statements for documents that are **false** in making material statements or presentations.

5. **Florida Bar Rule 4-3.3** regarding Candor Toward the Tribunal condemns making of a **false** statement of a material fact or failure to disclose a material fact.
6. **Florida Statute 443.071** dealing with unemployment compensation sets forth penalties for making **false** statements or representations regarding a material fact.
7. **Florida Rule of Civil Procedure 1.120** requires Pleadings of Special Matters to include a requirement that an alleged **false** statement be regarding a material fact.
8. **Florida Statute 440.105** regarding Workers' Compensation claims for benefit prohibits statements that are **false** or incomplete regarding a material fact.
9. **Florida Statute Section 817.2341** regarding fraudulent practices condemns **misleading** statements that are material.
10. **Florida Bar Rule 4-4.1** condemns misrepresentations and statements to others with respect to material allegations of fact.
11. **Florida Statute 633.819** dealing with fire prevention and control – insurance claim prohibits **making or concealing** material facts.



12. **Florida Statute 837.021** regarding perjury in unofficial proceedings. Statute makes it a misdemeanor crime for one to make a **false** statement regarding a material matter not in official proceedings and not under oath.

13. **Florida Statute 634.336** also penalizes the making of a **false** material fact in any book, report or statement in attempting to settle home warranty insurance claims.

14. **Florida Statute 817.59** establishes a criminal offense for making **false** statements as to financial condition or identity of a person where the statements are material.

### **SUMMARY OF ARGUMENT**

The Appellee First Florida Credit Union kept adding interest to Appellant Samuiel Messiha without any control. When the Appellant pointed out to this ridicules increase month over month; The Appellee First Florida Credit Union indicated that it was clerical mistake. It is not likely that a bank make such mistake calculating the interest rate. Opinion filed May 12, 2014 (**Exhibit A**), The Honorable First District Court cited the case of "**Freedman v. Fraser Eng'g & Testing, Inc., 927 So. 2d 949, 954 (Fla. 4th DCA 2006)**". The Freedman v. Fraser Eng'g & Testing, Inc. case the record shows the source of wrong calculations.

**“The record reflects how the error was made. The original contingency percentage set forth in the agreement was for 33 1/3%. However, because of the credit of the initial fee already received by Malinski, the percentage now due to the attorney became 25%....”**

This case has a record reflects how the error was made. This case is different than our case since no record shows The Appellee clerical error.

### **CONCLUSION**

Appellant Pro Se Samuel Messiha respectfully asserts that The Honorable District Court has overlooked or misapprehended points of law and facts, and therefore requests This Honorable Florida Supreme Court should invoke discretionary jurisdiction of this case, pursuant to Fla. R. App. P. 9.030(A)(2)(B)(i), as a proper basis for jurisdiction since the case has fraudulent and abuse during the trial.

The Petitioner is seeking to invoke the discretionary jurisdiction of this Honorable Florida Supreme Court for review herein pursuant to Florida Constitution Article V, §3(b)(3), and as set forth in Fla. R. App. P. 9.030(a)(2)(B)(i) which states,

(2) Discretionary Jurisdiction. The discretionary jurisdiction of the Supreme Court may be sought to review (B)(i) to be of great public importance.

Respectfully submitted this 3<sup>rd</sup> day of September, 2014.

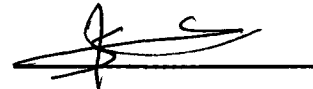


Name: SAMUIEL K. MESSIHA  
Address: 2656 Bantry Bay Drive  
Tallahassee, FL 32309  
(850) 668-0796

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished By mail to  
Appellee's Attorney DELOACH & SORENSON, PA POBOX 4128, Tallahassee, FL  
32315-4128, Telephone: (850) 386-3300, Facsimile: (850) 386-3663, Service E-mail:  
creservice@wggdlaw.com. This 3<sup>rd</sup> day of September, 2014.

Respectfully submitted,

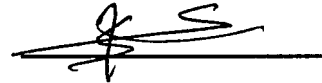


SAMUIEL K. MESSIHA  
2656 Bantry Bay Drive  
Tallahassee, FL 32309  
(850) 668-0796

**CERTIFICATE OF TYPE SIZE**

I HEREBY CERTIFY that 14 point Times New Roman type size was utilized to prepare this brief in compliance with Fla. R. App. P. 9.210.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Messiha', written over a horizontal line.

SAMUIEL K. MESSIHA  
2656 Bantry Bay Drive  
Tallahassee, FL 32309  
(850) 668-0796

Florida Supreme Court Case No.: **SC14-1335**

CASE NO.: **1D13-3608**

Lower Tribunal Case No.: **2012 CA 004091**

SAMUIEL K. MESSIHA,

Defendant/Petitioner

vs.

FIRST FLORIDA CREDIT UNION,)

Plaintiff/Respondent.

# Exhibit A

IN THE DISTRICT COURT OF  
APPEAL  
FIRST DISTRICT, STATE OF  
FLORIDA.

Opinion filed May 12, 2014.

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

SAMUIEL K. MESSIHA,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D13-3608

FIRST FLORIDA CREDIT  
UNION,

Appellee.

---

Opinion filed May 12, 2014.

An appeal from the Circuit Court for Leon County.  
Terry P. Lewis, Judge.

Samuiel K. Messiha, pro se, Appellant.

James E. Sorenson and John Blair Boyd, of Williams, Gautier, Gwynn, Deloach &  
Sorenson, P.A., Tallahassee, for Appellee.

PER CURIAM.

Appellant, Samuiel K. Messiha, appeals the Summary Final Judgment of Foreclosure. We find no error in the trial court's entry of summary judgment in favor of Appellee, First Florida Credit Union. However, given Appellee's

concession that the trial court's award of interest in the amount of \$16,513.79 resulted from a miscalculation, we reverse the judgment as to the interest award and remand the case with instructions to recalculate the interest owed to Appellee and enter an amended judgment. See Freedman v. Fraser Eng'g & Testing, Inc., 927 So. 2d 949, 954 (Fla. 4th DCA 2006) (affirming the final judgment enforcing and foreclosing the charging lien but remanding with instructions to recalculate the amount due); B.K.T., Inc. v. S. Fla. Bank, 658 So. 2d 1177, 1177 (Fla. 2d DCA 1995) (remanding the case for correction of the monetary judgment award).

AFFIRMED in part; REVERSED in part; and REMANDED with instructions.

LEWIS, C.J., THOMAS and OSTERHAUS, JJ., CONCUR.