

No. 18-105

In The
Supreme Court of the United States

MODESTA R. SABENIANO,
Petitioner;

v.

CITIBANK N.A.
CITIGROUP, INC.
Respondents

On Writ of Certiorari
to the United States Court of Appeals
For the Second Circuit

PETITION FOR REHEARING

Modesta R. Sabeniano
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Representing herself
"Pro Se" Petitioner

October 20, 2018

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, Modesta R. Sabeniano respectfully petitions for rehearing of the Court's per curiam decision issued on October 1, 2018 Modesta R. Sabeniano v. Citibank NA, Citigroup Inc.

Petitioner Sabeniano humbly moves for this most honorable Supreme Court to grant Leave of Court to her petition for rehearing and consider her case with merits briefing and Court argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed on a timely manner on October 20, 2018.

**REASONS FOR GRANTING
THE PETITION FOR REHEARING**

Petitioner humbly request the honorable Supreme Court to review Its denial decision because there were important matters that were not addressed but should have been and that there were important questions that were left without conclusive determination. The grant of rehearing petition is a reasonable possibility of a cure for the error in order observe uniformity and predictability in the courts. This case is purely about the recognition and enforcement of foreign court judgment GR 156132 as it meets all the requirements under the Uniform Act and that all the issues have been resolved in foreign court, but due to defendant-respondent's counsels'

false statements violated due process in American Court. There are significant facts and detailed information that were overlooked by the Court and if not given a second glance would tantamount to grave injustice and violation of the United States Constitution and Comity.

- I. The district court based Its judgment on defendant-respondent Citibank counsels' extrinsic fraudulent statements which renders the judgment as void therefore must be vacated.
- II. There is a fundamental error in the opinion and procedure made by the Court of Appeals which skews the analysis and result of the case resulting in constitutional error in violation of

petitioner's constitutional right to due process.

I. Extrinsic Fraud Caused by the Respondents' Counsels' Renders the Lower Courts' Judgment as Void:

1). Petitioner hereby invokes *Rule 60(b)(3)(4)*: "Relief from a Judgment (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: **(3) *Fraud*** (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; **(4) the judgment is void;**"

Respondent Citibank's counsels' fraudulent statement prevented petitioner Sabeniano from presenting her claim therefore this misrepresentations in discovery are actionable¹. Petitioner acted diligently to present the facts of the fraud upon discovery in the Court of Appeals however, due to extraordinary circumstances beyond control of the petitioner, she was prevented from conclusive deliberations in the lower courts. The new evidences she presented in the Court of Appeals are material to her claim and that the action satisfies equitable requirements (*Twombly and Iqbal*)². The

¹ See *Throckmorton*, 98 U.S. at 65-66. *Cf. e.g.*, *MMAR Group, Inc. v. Dow Jones & Co.*, 187 F.R.D. 282, 292 (S.D. Tex. 1999).

² *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009), *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007),

Court observes the "settled doctrine" that a party may obtain relief from a judgment where fraud prevents a fact from being a part of the original litigation when the fact "clearly proves it to be against conscience to execute a judgment³.

Petitioner is filing her independent action to seek relief because she did not have an opportunity to fully present and deliberate on her claims and evidences in the previous litigation because of fraudulent statement of satisfaction of judgment on the part of respondents' counsels.⁴ The respondent Citibank counsels' extrinsic fraud of issuing false statements alleging satisfaction of judgment became the basis of the lower courts' decision in favor of the

³ *Marshall v. Holmes*

⁴ *See Pickford*, 225 U.S. at 658

defendant-respondents Citibank that led to Its erroneous procedures and void decisions, thereby violated petitioner's constitutional right to due process (*Marshall v. Holmes*).

II. There are fundamental errors in the opinion and procedure made by the Court of Appeals. The detailed facts of the extrinsic fraud and the lower court errors are as follows:

(a). On September 1, 2017, the United States District Court, Southern District, Hon. Judge Alison J. Nathan issued Memorandum and Order, on **September 8, 2017** denied plaintiff-petitioner Sabeniano's Motion for Summary Judgment to recognize and enforce Philippine Supreme Court

Judgment ⁵GR 156132. In September 27, 2017, petitioner Sabeniano filed in a timely manner her Notice of Appeal.

(b). On September 29, 2017, Philippine Regional Trial Court, Branch 141 Hon. Judge Manalac Presiding Judge of Civil Case No: 11336 (GR 156132) and attested by Atty. Charlie E. Vallo, Branch Clerk of Court; issued duly-authenticated certification stating: *"This is to certify that from the records of the Civil Case No: 11336 entitled Modesta R. Sabeniano -versus- Citibank, NA the following checks with Modesta Sabeniano as payee were consigned to court by ACCRA LAW OFFICE, counsel of Citibank NA., to wit:*

1. *Citibank.NA, Citigroup Inc. Check No:*
MC60416512 PhP 16,716,439.61
(US\$398,010.46) Dated: August 30, 2007,
*(*Court Resolution Dated: February 4, 2008.)*
(CHECK WAS RETRIEVED BY
DEFENDANT CITIBANK NA AFTER
COURT RESOLUTION WAS ISSUED).
2. *Citibank.NA, Citigroup Inc. Check No:*
MC60424669 PhP 16,716,439.61
(US\$398,010.46) Dated: March 2008,
*(*Court Resolution Dated: June 18, 2008.*
(CHECK WAS RETRIEVED BY
DEFENDANT CITIBANK NA AFTER
COURT RESOLUTION WAS ISSUED).

3. *Citibank.NA, Citigroup Inc. Check No:*

MC60435911 PhP 16,716,439.61

(US\$398,010.46) Dated: October 10, 2008.)

*(*Court Resolution Dated: August 27, 2008.)**

*(CHECK WAS RETRIEVED BY
DEFENDANT CITIBANK NA AFTER
COURT RESOLUTION WAS ISSUED).*

4. *Citibank. NA Citigroup Inc. Check No.*

MC60470189 PhP 16,716,439.61

(US\$398,010.46) Dated: December 13,

2010. (CHECK REMAIN STALE AND
UNCLAIMED IN FOREIGN COURT).*

"Citibank NA and Citigroup Inc.

Manager's Check Nos: 6041652,

60224669 and 60435911 were respectively

retrieved on various dates by the

defendant-appellees counsel, ACCRA Law

Office. Currently, only Citibank NA, Citigroup Inc. Manager's Check No: 60470189 dated December 13, 2010 in the amount of PHP 16,716,439.61 (US\$398,010.46) payable to Modesta Sabeniano remains in the records and unclaimed by the said payee up to this date. Issued upon the request of Mrs. Modesta R. Sabeniano for whatever purpose it may serve her." Issued this 29th day of September 2017, Makati City, Philippines.

Signed :

Atty. Charlie E. Vallo

Branch Clerk of Court

Noted: Signed

HON. MARYANN E. CORPUS-MANALAC

Presiding Judge

(c). On October 4, 2017, Philippine Regional Trial Court, Branch 141, Atty. Charlie E. Vallo, Branch Clerk of Court of Civil Case No: 11336 (GR 156132); issued a duly-authenticated certification stating that: *"This is to certify that from the records of the Civil Case No: 11336 entitled Modesta R. Sabeniano -versus-Citibank, NA, the following checks with Modesta Sabeniano as payee were consigned to court by ACCRA LAW OFFICE, counsel of Citibank NA., to wit:*

1. Citibank.NA, Citigroup Inc. Check No:

MC60416512 PhP 16,716,439.61

(US\$398,010.46) Dated: August 30,

2007, (CHECK WAS RETRIEVED BY

DEFENDANT CITIBANK NA AFTER

COURT RESOLUTION WAS ISSUED).

2. *Citibank.NA, Citigroup Inc. Check No:*

MC60424669 PhP 16,716,439.61

(US\$398,010.46) Dated: March 2008,

(Court Resolution Dated: June 18,*

*2008.) *(CHECK WAS RETRIEVED BY*

DEFENDANT CITIBANK NA AFTER

COURT RESOLUTION WAS ISSUED);

3. *Citibank.NA, Citigroup Inc. Check No:*

MC60435911 PhP 16,716,439.61

(US\$398,010.46) Dated: October 10,

2008, (Court Resolution Dated:*

August 27, 2008.) (CHECK WAS*

RETRIEVED BY DEFENDANT

CITIBANK NA AFTER COURT

RESOLUTION WAS ISSUED);

4. *Citibank. NA Citigroup Inc. Check No:*

MC60470189 PhP 16,716,439.61

(US\$398,010.46) Dated: December 13, 2010 (CHECK REMAIN STALE AND UNCLAIMED IN FOREIGN COURT).*

"Citibank NA and Citigroup Inc. Manager's Check Nos: 6041652, 60224669 and 60435911 were respectively retrieved on various dates by the ACCRA LAW OFFICE Currently, only Citibank NA, Citigroup Inc.

Manager's Check No: 60470189 dated December 13, 2010 in the amount of PHP 16,716,439.61 (US\$398,010.46) payable to Modesta Sabeniano remains in the records and unclaimed by the said payee up to this date. Sabeniano refused to receive the said checks allegedly for being incorrect amount. Issued

upon the request of Mrs. Modesta R. Sabeniano for whatever purpose it may serve her.” Issued this 4th day of October 2017, Makati City, Philippines.

Signed: ATTY CHARLIE E. VALLO

Branch Clerk of Court

These two independently issued certifications contradicts defendant-respondents Citibank NA and Citigroup Inc.’s counsels’ false allegation of satisfaction of judgment.

(d). On December 15, 2017, petitioner Sabeniano filed with the United States Court of Appeals her new evidences (*Two Certifications*) from the Regional Trial Court Judge and Clerk of Court with her brief and affidavit to prove that defendants-respondents Citibank NA and Citigroup Inc. counsels

did not satisfy foreign court judgment. **VIOLATION**
No.1: *If a party seeks relief based on fraud within one year from the entry of judgment, Federal Rule of Civil Procedure 60(b) gives the trial court plenary power to vacate the judgment. (FED. R. Civ. P. 60(b)).* Petitioner Sabeniano presented in the Court of Appeals her evidences to support her claim that respondent counsels issued fraudulent statements of satisfaction of judgment to gain favorable judgment however, the court did not take judicial notice nor was there any discussion nor conclusion in the district court nor in the Court of Appeals. *Res judicata* does not apply. (*United States v. Beggerly*, 524 U.S. 38, 46 (1998)).

(e). On December 26, 2017, defendant-respondents' counsels' wrote a letter to United States

Court of Appeals, Clerk of Court, Ms. O'Hagan Wolfe requesting *91-days* from the date of appellant-petitioner's brief (**March 20, 2018**) to file appellees' brief but were unable to present, challenge nor deny petitioner's new evidences because on **February 14, 2018**, instead of strictly observing the *91-day request* to reply in accordance with the Rules, the Court of Appeals pre-empted/prevented defendant-respondent counsels' response brief when It *prejudicially* issued MANDATE: denied petitioner's motion for Summary Reversal quoting *Pillay vs. INS* without review, comment nor resolution on the veracity of the new evidences, nor denial of the facts stated in the new evidences and no discussion on impact of petitioner's newly presented evidences.

VIOLATION No. 2: The Court of Appeals violated Rules of Court **Rule 31. Serving and Filing Briefs:**

(a) Time to Serve and File a Brief. (1) The appellant must serve and file a brief within 40 days after the record is filed. ***The appellee must serve and file a brief within 30 days after the appellant's brief is served.*** The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing. (2) *A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.* (c) ***Consequence of Failure to File.*** If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. ***"An appellee who fails to file a brief will not be***

heard at oral argument unless the court grants permission". Instead of reprimanding the appellee counsels for failure to comply, the court awarded favorable judgment to the erring counsel which is clearly "extraordinary circumstance" *prejudicial to petitioner-Pro Se*.

(f). Petitioner diligently followed up with the appellate court on her new evidences on **February 23, 2018** with plaintiff-petitioner's Letter to Hon. Chief Judge Katzman requesting for clarification on the basis of the Denial of Appeal. However, due to the procedural imperfection and the complications created by the false statements of the respondent counsels and the prejudicial decisions of the court, petitioner's opportunity to present her new evidences and arguments with the appellate courts were overwhelmed by the preceding decisions of the court

which constitute as extraordinary circumstance beyond petitioner's control to sustain her claim. The United States Court of Appeals violated the "*equitable principles*" of law that despite petitioner's diligent pursuit of her rights of communicating with the Court, petitioner's effort were restrained by the extraordinary circumstances that were within the control of the Court but were beyond petitioner's control. (*Holland v. Florida*, 560 U.S. 631 (2010)).

(g). March 17, 2018, petitioner filed Motion for Reconsideration and Request for Rehearing *en banc*, Motion for Leave to File New Evidences as supplements to prove respondent counsels fraudulent statements. **VIOLATION No. 3:** The Court of

Appeals failed to observe **Rule 201. Judicial Notice of Adjudicative Facts: (b) Kinds of Facts That May Be Judicially Noticed.** *The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. (c) Taking Notice. The court: (1) may take judicial notice on its own; or (2) must take judicial notice if a party requests it and the court is supplied with the necessary information. (d) Timing. The court may take judicial notice at any stage of the proceeding. (e) **Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking*

judicial notice and the nature of the fact to be noticed.

If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(h). Unfortunately, petitioner's right to due process *was violated again* **Violation No.4: Rule 201**. On April 12, 2018, with the appellate court Order Denying Appeal citing Pillay v. INS, once again without opinion or review on the new evidences *317 U.S. 654*.

(i). On April 12, 2018, Order Denying Petitioner's Motion for Reconsideration en banc, Leave to Attach Exhibits and Supplement Motion in Support of the Appeal without comment on the new evidences. **Violation No. 5: Rule 201**.

(j). Mandate was issued by the Court of Appeals dated: February 14, 2018 forwarded to petitioner on **April 13, 2018** without comment on the new evidences. **Violation No. 6. Rule 201.**

(k). Despite repeated denials by the Court of Appeals, petitioner persisted to challenge prejudicial denials of the court to review new evidences (in violation of the **Rule 201**) to prove respondent's counsels' fraudulent statement of satisfaction of judgment by her letters to the Clerk of Court, motions and petitions. Petitioner never gave up and went on to persist diligently that on **April 23, 2018**, petitioner Filed Motion for Stay of Mandate in consideration for review of newly presented evidences. Once again, the court violated Rules.

(l). **May 1, 2018**, Notice of Non-Jurisdiction dated issued by the United States Court of Appeals

referring to the Mandate without comment nor review on the new evidences presented to prove that respondents' counsel misled the Court with its false statements to gain favorable judgment. **(Rule 201)**

(m). Plaintiff-petitioner filed timely her Petition for Writ of Certiorari on **June 29, 2018** and was assigned Docket No: 18-105 on **July 24, 2018**.

In brief, petitioner quotes from Justice Miller: *"that fraud could undermine a judgment where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case Thus, where "there has never been a real contest in the trial or hearing of the case" because of fraud, the fraud is extrinsic and relief will lie.*⁶

⁶ *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*.⁴

Truth is an essential feature of a properly functioning judicial system. *Truth*, however, is uncovered by the legal system only when issues and disputes are fully and fairly litigated. Indeed, if a party is prevented by the wrongdoing of another party from presenting a claim or defense in court, then the fact finder cannot effectively get to the truth. (See **RESTATEMENT (SECOND) OF JUDGMENTS** § 70 cmt. a (1982). Only if [the plaintiff] petitioner had had no opportunity to litigate the allegations of fraud... could this action go forward." Moore's, *supra* note 7, at § 60.81[1][b][iv] n.13 (quoting *Weldon v. United States*, 70 F.3d 1, 5 (2d Cir. 1995)).

CONCLUSION

Petitioner now invokes the inherent power of the United States Supreme Court to reverse decision and remand the case to the District Court and to vacate void judgment due to Extrinsic Fraud Caused by Respondent Counsels. ⁷ Due to extraordinary circumstances caused by the Court despite persistent due diligent effort of petitioner prevented the final resolution on the merits of the case which is beyond petitioner's control, therefore petitioner is entitled under the principles of *Equitable Judgment*. Petitioner request claim for \$19,100,505.04 (as per American CPA computed amount) and \$300 Million in damages as specified in the GR 156132 judgment.

⁷ See *Bucy v. Nev. Constr. Co.*, 125 F.2d 213, 216-17 (9th Cir. 1942);

Respectfully submitted,


Modesta R. Sabeniano

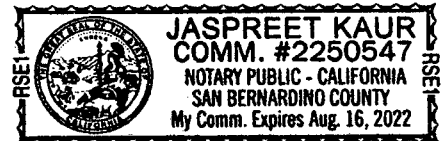
Pro-Se Petitioner

October 18, 2018

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Notary:

NOTARIAL JURAT
State of California; County of San Bernardino
Subscribed and sworn to (or affirmed) before me
on this 18 day of Oct., 20 18,
by MODESTA R. SABENIANO,
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.
Signature Jaspreet Kaur



CERTIFICATION

Petitioner hereby certifies that this petition for Rehearing is presented in good faith and not for delay. (Rule 44.1)

Signed:


Modesta R. Sabeniano

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

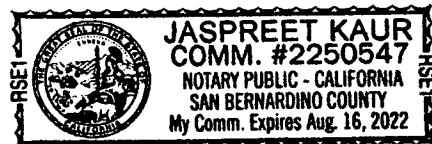
Petitioner-Pro Se

October 18, 2018

NOTARIAL JURAT
State of California; County of San Bernardino
Subscribed and sworn to (or affirmed) before me
on this 18 day of Oct., 2018,
by MODESTA R. SABENIANO,
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature Jaspreet Kaur

Notary:



DECLARATION:

That, I Modesta R. Sabeniano, plaintiff-petitioner in the case of Modesta R. Sabeniano v. Citibank NA and Citigroup Inc. currently on petition for rehearing for writ of certiorari do solemnly swear under penalty of perjury:

1). That, on September 29, 2017, I procured two authenticated and duly certified certifications from the Philippine Regional Trial Court, Branch 141 Hon. Judge Manalac Presiding Judge of Civil Case No: 11336 (GR 156132) and attested by Atty. Charlie E. Vallo, Branch Clerk of Court; issued duly-authenticated certification stating that defendant-respondents did not satisfy foreign court judgment because the check consigned by the defendants-respondents Citibank counsels in foreign court were immediately retrieved by the defendant-respondents

counsels upon securing foreign court resolutions and that ALL the checks were never cashed by the recipient petitioner Sabeniano, nor did petitioner Sabeniano did not receive a single penny from the defendant-respondents;

2). That, these new evidences were unavailable to me for presentation previously in the district court;

3). That, these new evidences will contradict previous testimonies sworn and presented by the defendant-respondents' counsel in the district court and in the Court of Appeals and establishes that counsels' issued false statements in court to gain favorable judgment;

4). That, I diligently presented the facts of the fraud upon discovery in the Court of Appeals.

5). That, I was prevented from conclusive deliberations in the lower courts and that the new evidences I presented in the Court of Appeals are material to my claim and that the action satisfies equitable requirements;

6). That, I, am filing this independent action to seek relief because I did not have an opportunity to fully present and deliberate on my claims and evidences in the previous litigation because of defendant-respondents counsels fraudulent statement of satisfaction of judgment;

7). That, the respondent Citibank counsel's extrinsic fraud of issuing false statements alleging satisfaction of judgment became the basis of the lower courts' decision that led to Its erroneous procedures and void decisions, thereby violated my constitutional right to due process;

8). That, there are fundamental errors in the

opinion and procedure made by the Court of Appeals in their decision;

9). That, on December 15, 2017, I, petitioner filed with the United States Court of Appeals my new evidences (two Certifications) from the Regional Trial Court Judge and Clerk of Court with my brief and affidavit to prove that defendants-respondents Citibank NA and Citigroup Inc. counsels did not satisfy foreign court judgment;

10). That, the Court of Appeals violated FRCP 60(b);

11). That, *res judicata* does not apply in this case;

12). That, on February 14, 2018, the Court of Appeals pre-empted defendant-respondent counsels' response when It *prejudicially* issued MANDATE without review, comment nor resolution on the

veracity of the new evidences, nor denial of the facts stated in the new evidences and no discussion on impact of petitioner's newly presented evidences;

13). That, the Court of Appeals violated Rules of Court Rule 31. Serving and Filing Briefs;

14). That, I petitioner diligently followed up with the appellate court on my new evidences on February 23, 2018 with plaintiff-petitioner's Letter to Hon. Chief Judge Katzman requesting for clarification on the basis of the Denial of Appeal;

15). That, due to the procedural imperfections and the complications created by the false statements of the respondent counsels, petitioner's opportunity to present her new evidences and arguments with the appellate courts were overwhelmed by the preceding decisions of the court preventing opportunity to present her claim in court

which constitute as extraordinary circumstance beyond her control.

16). That, the Court of Appeals violated Rule 201. Judicial Notice of Adjudicative Facts: (b) Kinds of Facts That May Be Judicially Noticed; and that petitioner was not granted the opportunity to be heard under Rule 201;

17). That, despite repeated denials by the Court of Appeals, I petitioner persisted to challenge prejudicial denial of the court to review new evidences (in violation of the Rules) to prove respondent's counsels' fraudulent statement of satisfaction of judgment by her letters to the Clerk of Court, motions and petitions, on April 23, 2018, petitioner Filed Motion for Stay of Mandate in consideration for review of newly presented evidences. Once again, the court did not grant

petitioner the opportunity to be heard under the Rules.

18). That, I petitioner invoke **FED. R. Civ. P.**

60(b): *If a party seeks relief based on fraud within one year from the entry of judgment, Federal Rule of Civil Procedure 60(b) gives the trial court plenary power to vacate the judgment.*

Respectfully submitted,


Modesta R. Sabeniano

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Pro-Se Petitioner

Notary:

NOTARIAL JURAT
State of California; County of San Bernardino
Subscribed and sworn to (or affirmed) before me
on this 18 day of Oct, 20 18,
by MODESTA R. SABENIANO,
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.
Signature Jaspreet Kaur

