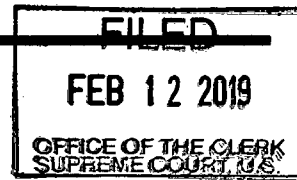


No. 18-1196



In The
SUPREME COURT OF THE UNITED STATES

William Kinney & Margaret Kinney,

Petitioners

vs.

Anderson Lumber Company, Inc.,

Kizer & Black, Attorneys, PLLC

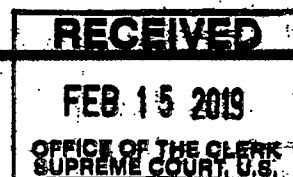
McDonald, Levy, & Taylor, Attorneys

Respondents

On Petition For Mandamus To The United States Court
of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF MANDAMUS

William & Margaret Kinney
2442 Allegheny Loop Road
Maryville, TN 37803
865-773-5299



QUESTIONS PRESENTED

Whether this court should reverse the decision of the Sixth Circuit, and direct the District Court:

1. To apply the doctrine of Equitable Tolling and reinstate petitioner's original FDCPA claim;
2. To reinstate petitioners additional (or new) FDCPA claim that arose on April 10, 2017 during the district court proceedings;
3. To reinstate Petitioner's Title 42 §§ 1983 and 1985 claims until the court decides whether or not state court jurisdiction over the petitioners comports with the 14th amendment to the U.S. Constitution;
4. To direct the district court to resolve petitioner's several motions left unresolved at the time of dismissal, which was not reviewed by the Sixth Circuit.
5. To stay the state court proceedings under the All Writs Act, 28 U.S.C. § 1651 until the respondents have complied with all district court orders and the matter of state court jurisdiction is resolved.

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CONSTITUTIONAL PROVISIONS, AND STATUTES AT ISSUE

The First, Fifth, Seventh, Ninth, Tenth, and Fourteenth Amendments To The United States Constitution.

42 U.S. Code § 1983 and § 1985

15 U.S. Code § 1692 et seq.

28 U.S.C. § 1651(a) and 28 U.S.C. § 1254(1). Constitutional Provisions and Statutes are re-printed in its entirety, in the appendix pages 52-53.

OPINIONS BELOW

The order of the United States Court of Appeals for the Sixth Circuit denying rehearing *en banc* was filed on November 14 2018.¹ The order of the United States Court of Appeals for the Sixth Circuit denying this appeal was filed on September 13, 2018.² The Notice of Appeal to the Sixth Circuit was filed on February 7, 2018. The memorandum order of the United States District Court for the dismissal of the complaint was filed on January 9, 2018.³ All of which is reprinted in the Appendix hereto, pages 17-53.

JURISDICTION

On February 16, 2016, petitioners filed the instant case in the United States District Court for the Eastern Division of Tennessee at Knoxville.⁴ We alleged, *inter alia*, deprivations of our civil and equal rights within the meaning Title 42 § 1983 and § 1985 and violations of the Fair Debt Collection Practices Act, 15 U.S. Code § 1692 et seq. On March 28, 2017, the District Court dismissed petitioners §§1983 & 1985 claims.⁵ On January 9, 2018, the district court dismissed the remaining original FDCPA claim, while sending a second FDCPA claim which arose during federal court litigation to the state court.⁶ On February 7, 2018, the petitioners timely filed an appeal with the United States Circuit Court of Appeals for the Sixth Circuit, which affirmed the district court's ruling on September 13, 2018.⁷ On October 11, 2018

¹ Appeal No. 18-5146, DOC 27

² Appeal No. 18-5146, DOC 24

³ Case No. 3:16-cv-00078, DOC 66

⁴ Case No. 3:16—cv-00078

⁵ Case No. 3:16-cv-00078, DOC 28

⁶ Case No. 3:16-cv-00078, DOC 66

⁷ Appeal No. 18-5146, DOC 24

Petitioners timely filed a petition for rehearing en banc with the Sixth Circuit,⁸ which was denied on November 14, 2018.⁹ Petitioners have timely filed this Petition and the jurisdiction of this Court to review the Judgment of the Sixth Circuit is invoked under 28 U.S.C. § 1651(a) or 28 U.S.C. § 1254(1).

STANDARD OF REVIEW

This Court has authority under the All Writs Act to issue writs of mandamus to the court of appeals in order to prevent its appellate jurisdiction from being thwarted, or defeated by the unauthorized action of the court below.¹⁰ This action is ripe for mandamus intervention by this Court because it involves petitioner's rights under the federal constitution and statutory rights under the FDCPA. An official act of the district court is in contravention of a constitutional and statutory duty, not merely a discretion of authority.¹¹ The grant of mandamus is therefore an equitable remedy; a matter for the discretion of the court, the exercise of which is governed by well-settled principles.¹²

RELIEF SOUGHT

Petitioners William Kinney and Margaret Kinney respectfully request that the Court grant this petition for a writ of mandamus and direct the district court to (1) reinstate

⁸ Appeal No. 18-5146, DOC 26

⁹ Appeal No. 18-5146, DOC 27

¹⁰ *McClellan v. Carland*, 217 U. S. 268, at 269

¹¹ *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212 “[the court] took some action it was not empowered to take or declined to take some action required of it.” See also *Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, at 26, “The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.”

¹² *McClellan v. Carland*, 217 U.S. 268, at 280.

petitioner's claims under Title 42 §§ 1983 and 1985, (2) reinstate petitioner's claims under the FDCPA, and (3) compel the respondents to comply with all district court orders still pending, and (4) to promptly rule on Petitioner's long pending motions in federal court further stated herein, including petitioner's unopposed Urgent Motion to Enjoin the State Court Proceedings filed with the Sixth Circuit that was unanswered in its review 42 U.S.C. § 1983 vests federal courts with the power to enjoin a person acting under color of state law from depriving a United States citizen of any rights, privileges, or immunities secured by the Constitution and laws of the United States. Injunctive relief is also authorized by § 4 of the Sherman Act. [DOC 59] Petitioners civil and equal rights have suffered, and continue to suffer, irreparable harm and inadequacy of legal remedies. [Beacon Theatres, Inc. v. Westover, 359 U.S. 500, at 506, 507] We have been improperly denied a jury trial, and mandamus is available under the All Writs Act, 28 U.S.C. § 1651. [359 U.S. 511]

INTRODUCTION

Unless otherwise stated, all references to court documents are for Case No. 3:16-cv-00078, which is Appeal No. 18-5146. On February 16, 2016, Petitioners filed a claim in the U.S. District Court in Knoxville, Tennessee, for the Eastern Division of Tennessee, the Honorable Chief Judge Thomas A. Varlan, presiding. Our Complaint stated violations of our civil and equal rights within the meaning of Title 42 §§ 1983 and 1985, as well as violations of the Fair Debt Collection Practices Act, Title 15 Section § 1692 et seq. On March 28, 2017, the district court dismissed our § 1983 and 1985 claim. On January 9, 2018, the court dismissed the Petitioner's FDCPA claim as barred by the statute of limitations, while pending before the court, there was a new FDCPA claim that was not barred by the statute of limitations. The court dismissed this case without ruling on motions related to discovery fraud and Fraud Upon the Court that invoked equitable tolling of the FDCPA statute of

limitations under the Doctrine of Fraudulent concealment and Fraud Upon the Court. The District Court's order violates Petitioners' constitutionally protected right to due process.¹³ The Order exceeds the district court's authority and proper judicial role in that the court has refused to exercise its functions. If ever the extraordinary remedy of a writ of mandamus is warranted, it is here. The Sixth Circuit should be reversed and the district court's order must be vacated.¹⁴

ARGUMENT

1. The FDCPA claim of April 10, 2017, or "new FDCPA claim."

Respondent Anderson's original state claim is against the petitioners only. On April 10, 2017, respondent Anderson initiated a new and discrete unlawful debt collection activity against the "Kinney Family,"¹⁵ that violates Sections 1692(d-g) of the FDCPA

¹³ Denial of a litigant's right to trial before the court amounts to an abdication of judicial function and is an abuse of discretion. [La Buy v. Howes Leather Co., Inc., 352 U.S. 249, at 256] This Court's mandamus practice is "necessary to protect the constitutional right to trial by jury." [Kamen v. Nordberg, 485 U.S. 939, 940] "[t]he right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved . . . inviolate." [Beacon Theatres, Inc. v. Westover, 359 U.S. 500, Footnote 16.]

¹⁴ Included in the Order dismissing Petitioner's Section 1983 claim was a Rule 5.1 Constitutional Challenge of Tennessee's law for the unlicensed practice of (UPL), and a Motion to Enjoin Tennessee's UPL law for violating the Sherman Anti-Trust Act. These two items have been presented separately in a Petition for a Writ of Certiorari now before this court. [filed on or about February 1, 2019.]

¹⁵ DOC 32 Page ID #: 506. Also, DOC 35-3, Page ID #: 584, item No. 4., Also, DOC 35-3, Page 13 of 25 (No Page ID # was assigned). This dismissal conflicts with the Congressional intent of the FDCPA to protect "Another group of people who do not owe money but may be deliberately harassed...the family...of the consumer." H.R. Rep. No. 131, at 8

and is not barred by the statute of limitations. Petitioners disputed the debt, and respondent Anderson provided no validation notice.¹⁶ Respondents state the alleged debt is from a commercial account, however, when directed by the district court to produce said commercial credit contract executed by the petitioners, the respondents failed to do so. Neither the district court or the Appeals Court had the discretionary authority to deny the petitioners a federal right of action and benefit of a trial concerning the new FDCPA claim.¹⁷ In its order for dismissal, the district court mischaracterized the new FDCPA claim as a “state law claim.”¹⁸ This court has stated that “A federal court cannot abandon its jurisdiction already properly obtained of a suit and turn the matter over for adjudication to the state court,” which is precisely what has occurred in this case.¹⁹ By dismissing the new FDCPA claim, the district court has prevented this controversy from being adjudicated and has thereby defeated appellate review.²⁰ Subsequently, the subject matter of the district court's action is within the appellate jurisdiction of this court for purposes of the All Writs Act.

2. Petitioner's Original FDCPA Claim, and Tolling the Statute of Limitation for Fraud Upon the Court

¹⁶ Frey v. Gangwish, 970 F.2d 1516 (6th Cir. 1992)

¹⁷ To satisfy the jurisdictional prerequisite, it is not necessary that a case be pending in the court asked to issue the writ. Rather, it suffices that the case may at some future time come within the court's appellate jurisdiction. See, e. g., United States v. Mellon Bank, N. A., 545 F.2d 869, 872 (3d Cir. 1976).

¹⁸ “...Plaintiff's FDCPA claims will be dismissed, and the remaining claims are state law claims...” No.78, Document 66, Page ID #: 1173

¹⁹ Chicot County v. Sherwood, 148 U. S. 529

²⁰ UNITED STATES of America v. Hon. Judge Almeric L. Christian, 660 F.2d 892, at 12

At a hearing held at the District Court in Knoxville, TN, on October 18, 2017, the HONORABLE H. Bruce Guyton, Chief Magistrate Judge for the Eastern Division of Tennessee, asked respondent Anderson to produce the Anderson Lumber credit contract allegedly executed by the petitioners, which is the account sued upon in the state case.²¹ When the respondent could not produce such a document at said hearing, Judge Guyton asked respondent Anderson's counsel: "Counsel, do you have a completed, filled-out, signed Anderson Lumber Company credit application from any of these parties? Atty. Melanie E. Davis (Kizer & Black) told the court, "There's a copy of it somewhere around the office." Atty. Morton responded: "To my knowledge, Your Honor, there was, but I don't have it here in front of me to actually confirm."²² Both statements made by Atty. Davis and Atty. Morton were judicial admissions made to Judge Guyton to assert the truth of a matter. Namely that the Anderson Lumber credit application not only exists, it is located somewhere at the law office of Kizer & Black.²³ Both statements were false representations intentionally made to conceal Petitioner's right of action, and prevent the court from learning that respondent Anderson lacks standing to bring the state lawsuit. The respondent's attack upon the fundamental fairness and integrity of the court constitutes Fraud Upon the Court which has no Statute of Limitations.²⁴ The Doctrine of Fraudulent Concealment and Equitable tolling apply to Petitioner's original FDCPA claim (Case No. 00078).

²¹ Case No. 3:16-cv-00078, DOC 54, Page ID # 1058 (The Court Order to Produce)

²² Case No. 3:16-cv-00078, DOC 71, Transcript Page 33, lines 9-16]

²³ Appeal No. 18-5150, DOC 11-1, Page 25

²⁴ Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010) See also US Court of Appeals for the District of Columbia Circuit - 463 F.2d 268 (D.C. Cir. 1971) "The spirit of the "fraud on the court" rule is applicable whenever the integrity of the judicial process or functioning has been undercut--certainly in any instance of misconduct by a party."

3. Fraudulent Concealment and Equitable Tolling

Pursuant to F.R.C.P., Rule 72(a); and Rule 28 U.S. Code § 636(b)(1)(C), on January 5, 2018, petitioners timely filed a Motion to Reconsider [DOC 65] Magistrate Judge Guyton's Memorandum and Order [DOC 54]. Judge Guyton erroneously denied our Motion to Compel for non-compliance with a scheduling order, although the petitioners provided the court with a certified letter showing that we did comply with the scheduling order. [Case 3:16-cv-00078, DOC 65-1, Page ID #: 1164] Petitioner's Motion to Compel was a request to compel the respondents to furnish copies of the documents that form the legal basis for their state claim, and are also relevant and material to petitioners FDCPA claim. These are the same documents the district court ordered the respondents to produce - to no avail. [Doc 54, Page ID #: 1058] In said motion to reconsider, the petitioners further demonstrated to the court the existence of a multitude of deceptive responses and non-answers made by the respondents to fraudulently conceal the factual predicate of petitioner's claim. Petitioner's moved for sanctions pursuant to F.R.C.P., Rule 16(f)(C) for failure to comply with pre-trial orders, and contempt charges pursuant to Rule 11. Petitioners also requested relief pursuant to Rule 37(b)(2)(A)(i), that the court accept as established for the purposes of this action, that the respondents will not or cannot produce the documents it was ordered to produce by the court. [DOC 65, Page ID #: 1160]. Petitioner would then move to toll the statute of limitations under the doctrine of Equitable Tolling on the grounds of Fraudulent concealment and Fraud Upon the Court. However four days later (January 9, 2018) the district court improvidently dismissed our claim without ruling on said motions. [FDIC v. Morriss, 273 F. App'x 390, 390-391 (5th Cir. 2008) "A district court abuses its discretion when it . . . ignores or misunderstands the relevant evidence, and bases its decision upon considerations having little factual support."]

Furthermore, on January 9, 2018, petitioners mailed to the district court a request for a hearing to resolve discovery disputes [DOC 68], that was received on January 11, 2018, (USPS Certified Mail No. 7005 1160 0004 5533 2697), but not filed until January 23, 2018. Document #68 further detailed the defendant's discovery abuse (and fraud), and also addressed numerous instances whereby the district court constrained the petitioners in their attempts at discovery. Plaintiffs have not been accorded an opportunity for full and fair litigation.

4. Petitioners Challenge of State Court Jurisdiction

Jurisdiction can only be conferred by law. In our initial and amended pleadings, we challenged the state court's unlawful jurisdiction which violates our rights under the due process clause of the Fourteenth Amendment²⁵ While Tenn. Code Annotated 16-10-101 confers general jurisdiction on the state's circuit courts, Tennessee's Supreme Court requires the plaintiff to make a prima facie showing in order for the state to exercise jurisdiction over a defendant that comports with the Fourteenth Amendment.²⁶ Respondents have filed a fraudulent claim in state court that does not invoke the jurisdiction of the state court, but the state court has proceeded anyway.²⁷ When the respondents were ordered by the district court to produce documents that would demonstrate whether or not the state court has lawful jurisdiction over the petitioners, the respondents ignored the district court's order

²⁵ Case 3:16-cv-00078, DOC 1, Filed 02/16/16, Page ID #: 12. Also DOC 58, Page ID # 108, Paragraph 22.

²⁶ Appeal No. 18-5150, DOCUMENT 11-1 Pages 18-27.

²⁷ Anderson Lumber Company, Inc. v. Kinney et al, Blount County Circuit Court, Case No. E-24747

[DOC 54] without consequence, and our federal complaint was dismissed.²⁸ This court ruled in *Pennoyer* that “the judgment of a court lacking personal jurisdiction violate[s] the Due Process Clause of the Fourteenth Amendment,”²⁹ and “The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause: the personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. [*Ins. Co. of Ireland v. Compagnie Des Bauxites*, 456 U.S. 694 at 702] Petitioners implicitly state and can affirmatively demonstrate that the state court does not have subject matter or personal jurisdiction over the petitioners. The dismissal of Case No. 00078 [DOC 28] before the matter of lawful state court jurisdiction was resolved, has reduced the Petitioners to the state of having no legal status. **This is the principle truth of the matter, we have not been accorded our constitutional rights by the district court or the Sixth Circuit.**

5. Revised Amended Complaint

On May 25, 2017, for the first time since filing our initial complaint on February 16, 2016, petitioners filed a motion for leave of court to amend their complaint [DOC 35]. While there had yet to be a ruling on DOC 35, petitioners filed a revised amended complaint ³⁰ on December 5, 2017 to include several new unlawful actions taken by

²⁸ 25 Am.Jur., Habeas Corpus, sec. 27, p. 161. See also *Palmer v. Ashe*, supra. “Jurisdiction of the person and of the subject matter is not alone conclusive [and] the jurisdiction of the court to make or render the order or judgment” depends upon due observance of the constitutional rights of the accused.

²⁹ *Pennoyer v. Neff*, 95 U. S. 714, 95 U. S. 732 (1878), “the judgment of a court lacking personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment as well.”

the respondents. Petitioners revised amended complaint [DOC 58] superseded DOC 35 and was controlling. The refusal of the trial court to address the violations of our statutory and constitutional rights found in our revised amended complaint [DOC 58], in reality and effect, was a refusal to permit the case to come to a hearing upon questions of law and of fact, and “falls little short of a refusal to permit the enforcement of the law.” [Ex Parte United States, 287 U.S. 241, at 250] It is established that A Writ of Mandamus may issue in aid of this court’s appellate jurisdiction over an unauthorized action of the court below. [McClellan v. Carland, 217 U.S. 268] The Sixth Circuit, in affirming the district court’s order, failed to give full legal effect to petitioners revised amended complaint [DOC 58] which constitutes an application of unauthorized judicial discretion.

6. Urgent Motion To Stay State Court Proceedings

For the reasons previously stated in Sections 1 and 3 above, and described in our appeals, respondent’s fraudulent state claim failed to meet the state standard for acquiring jurisdiction over the petitioners that comports with the Fourteenth Amendment to the U.S. Constitution, thus making the state case an unlawful state action against the petitioners which should have already been dismissed by the district court. In the absence of a dismissal, petitioners tried unsuccessfully to obtain a Stay from the Appeals Court on the grounds of unlawful state court jurisdiction and the holding of *ex parte* hearings that violated petitioner’s rights under the due process clause and equal protection clause of the Fourteenth Amendment. Congress

³⁰The revised amended complaint [DOC 58] included the new FD CPA Claim, Page 1084, UPL and the Sherman Anti-Trust Act, Page ID # 1084, the State Court Jurisdictional Issue, Page ID # 1085, and the issue of Fraud Upon the Court, Page ID # 1093, and the Ex Parte hearing held on June 12, 2017, Case No. 3:18-cv-00227.

enacted 28 U.S.C. § 2283 as an immediately enforceable right, so that persons who have been deprived of federal constitutional rights would not have to endure a state court trial in a tainted setting. In its Order of March 28, 2017, the District Court ruled that petitioners unopposed Motion to Enjoin the State Court Proceedings [DOC 26, Page ID #: 442] was not ripe for consideration. Less than four months later, on June 12, 2017 the respondents and the state court held an *ex parte* hearing and dismissed Margaret's original counterclaim which contained a substantive due process property interest in the form of compensatory damages. On July 6, 2017 petitioners removed the state case to district court for deprivation of civil rights within the meaning of Section 1983.³¹ On January 9, 2018, the district court remanded the case without ruling on the June 12, 2017 state hearing. On June 8, 2018, Petitioners filed a civil rights claim regarding the June 12, 2017 *ex parte* state hearing.³² On September 6, 2018, petitioners filed an Urgent Motion to Stay the State Court Proceedings with the Sixth Circuit [DOC 23] which was time sensitive because the respondents had set a state trial date for October 16, 2018, (which was continued by the respondents on September 18, 2018). Petitioner's Urgent Motion for a Stay was based in part on the respondent's refusal to comply with the district court's order to produce documents that are relevant and material to the petitioner's defense in state court. On September 18, 2018, the respondents and the state court held yet another *ex parte* hearing to dismiss William Kinney and Christopher Kinney's counterclaims. Christopher Kinney, an original defendant in the state case, passed away on December 28, 2015. On April 8, 2016, in violation of the federal removal statute and Supremacy clause, respondent Anderson held an *ex parte* hearing at state court and obtained an order for non-suit of Christopher Kinney while the district court had jurisdiction. [Case No 3:15-cv-00324, DOC 16] The non-suit of Chris Kinney violated

³¹ Case No. 3:17-cv-00288

³² Case No. 3:18-cv-00227

the petitioner's right to due process. We had filed a motion with the district court to substitute William Kinney for Christopher Kinney. [Case No 3:15-cv-00324, DOC 15]. The *ex parte* hearing of April 8, 2016, as well as the *ex parte* hearings held on June 12, 2017, and September 18, 2018 demonstrate that the state judicial proceedings in question are themselves an independent violation of our federal constitutional rights. The Sixth Circuit did not rule on our motion for a stay. The respondents have demonstrated malice and reckless disregard toward the petitioner's federal constitutional rights.³³ It is beyond dispute that federal courts have jurisdiction over suits such as this, to enjoin state officials from interfering with federal rights.³⁴ [*Ex parte Young*, 209 U. S. 123, at 160-162]

7. Judicial Notice of Case No. 3:18-cv-00227

When deciding our appeal and Urgent Motion for a Stay of the State Court Proceedings, we requested that the appeals court take notice of Case No. 3:18-cv-00227 filed by petitioners on June 8, 2018, concerning the *ex parte* hearing held by the respondents on June 12, 2017. The state court's issuance (at said hearing) of an immediately enforceable judgment that applied state law to deprive the plaintiffs of a federal right, constitutes state action and thus action under color of state law within the meaning of Title 42 Section 1983. The taking of Margaret's Property

³³ At the time of this writing, Petitioners are in the process of filing supplemental and amended pleadings in Case No. 3:18-cv-00227 to include the *ex parte* state hearing of September 18, 2018, and a "Class of One" claim. [Case No. 3:18-cv-00227, DOC 28]

³⁴ This court ruled in *Pennoy*, "Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law." *Pennoy v. Neff*, 95 U.S. 714, at 733

unquestionably constitutes a seizure under the Fourth Amendment. The *ex parte* hearing held on June 12, 2017 at state court was in effect, a Quasi In Rem proceeding directed against Petitioner Margaret Kinney's property interest found in her counterclaim (approximately worth \$12,000.). The state unlawfully disposed of Margaret's property without providing adequate notice and an opportunity to be heard. This is not a matter of jurisdiction over property properly acquired by the state court. This is property acquired by fraud, in violation of Margaret's federal rights and this court has jurisdiction over the res.³⁵ The district court must vacate the state court's unlawful order, and enjoin the state court proceeding until the matter of state court jurisdiction is resolved. Petitioner's currently have a Motion for a Show Cause Order pending in the District Court that will resolve the matter of state court jurisdiction with certainty, in favor of the petitioners. [Case No. 3:18-cv-00227] In the meantime, an injunction is necessary in aid of this court's jurisdiction to preserve the court's authority over the res that is the subject of both federal and state litigation. Petitioners Section 1983 claim (found in Case No. 3:18-cv-00227) also authorizes an exception to the anti-injunction act that will end the continued deprivation of petitioner's civil rights from *ex parte* state court hearings until the Show Cause hearing requested by the petitioners can be held in district court.³⁶

³⁵ The rule has become well settled, therefore, that Section 265 does not preclude the use of the injunction by a federal court to restrain state proceedings seeking to interfere with property in the custody of the court. *Toucey v. New York Life Insurance Co.*, 314 U.S. 118, at 135 [See also Footnote 6] *Farmers Loan & Trust Co. v. Lake Street R. Co.*, 177

³⁶ Another group of cases is said to constitute an exception to 265, namely, where federal courts have enjoined litigants from enforcing judgments fraudulently obtained in the state courts. [Marshall v. Holmes, 141 U.S. 589 , 12 S.Ct. 62; Simon v. Southern Railway Co., 236 U.S. 115 , 35 S.Ct. 255; Essanay Film Co. v. Kane, 258 U.S. 358 , 42 S.Ct. 318; Atchison, T. & S.F.R. Co. v. Wells, 265 U.S. 101 , 44 S.Ct. 469; Wells Fargo & Co. v. Taylor, 254 U.S. 175 , 41 S.Ct. 93.]

REASONS TO GRANT THIS WRIT

I. A WRIT OF MANDAMUS IS THE ONLY MEANS PETITIONERS HAVE TO REMEDY THE IRREPARABLE HARM CAUSED BY THE DISMISSAL OF CASE NO. 3:16-cv-00078.

There can be no real dispute that Petitioners “have no . . . adequate means to attain the relief” they seek other than through mandamus.

II. PETITIONERS’ RIGHT TO MANDAMUS IS CLEAR AND INDISPUTABLE.

Petitioners’ right to mandamus here is clear and indisputable, for the Order exceeds the district court’s authority, in that the court has refused to exercise its functions and jurisdiction.

1. Respondents discovery fraud and Fraud Upon the Court, clearly defined in Documents 65 and 68, tolls the statute of limitations on petitioner’s original FDCPA claim under the Doctrine of Equitable Tolling, and was not subject to dismissal.

2. Petitioners had stated a new FDCPA claim from an unlawful debt collection activity initiated by the respondent on April 10, 2017 that was not barred by the statute of limitations. Petitioners were denied a federal right of action.

3. Petitioners Section 1983 claims were not subject to dismissal under Rule 12(b)(6) or Rule 12(c) because the respondent had no right to bring such a motion. The respondents filed a fraudulent claim and the state court clearly does not have jurisdiction over the Kinneys. The District Court’s refusal to exercise its functions and address the matter of state court jurisdiction that comports with the Fourteenth

Amendment has in effect granted authority to the state court to proceed in violation of the petitioner's federal constitutional and statutory rights

4. The state court proceedings must be stayed under 28 U.S.C. § 1651 or 28 U.S. Code § 2283 until the respondents (1) comply with all district court orders, and (2) the matter of state court jurisdiction is resolved.

III. ISSUANCE OF THE WRIT IS APPROPRIATE HERE

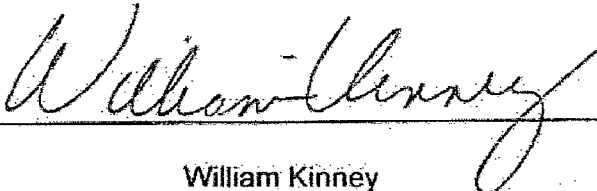
As discussed above, Petitioners clearly satisfy the first two requirements for issuance of a writ. Even once these factors are satisfied, however, “the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.” As stated in Section II above, Petitioners have a clear and indisputable right to a ruling on mandamus because the trial court has abused its discretion and the Sixth Circuit Court of Appeals Court has declined to make its own review of the issues stated in this petition. The extraordinary writ of mandamus is a useful safety valve for “promptly correcting serious errors” such as those named in this petition. [In re Lombardi, 741 F.3d 888, 893 (8th Cir. 2014) (en banc), quoting *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009).]

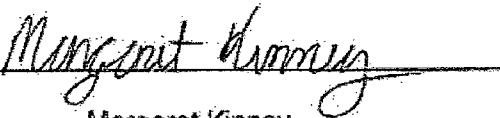
CONCLUSION

We have been denied our constitutional and statutory rights in a post judgment appeal. Therefore, this court's ruling in *Roche* to deny mandamus is not applicable because “adequate relief cannot be obtained in any other form from any other court.”

Petitioners have, in good faith, followed all the required avenues for redress of its injuries prior to respectfully petitioning this Court to grant a writ of mandamus.

Respectfully submitted this 11TH day of February, 2019


William Kinney


Margaret Kinney

CERTIFICATE OF COMPLIANCE

I certify that this brief is in compliance with the Rules of the Supreme Court of the United States, and contains 4,364 words, excluding the table of contents, table of authorities, Constitutional provisions and statutes, rules or regulations, appendix, and certificate of service.

CERTIFICATE OF SERVICE

A copy of this document has been sent to the respondents, via USPS Certified Mail;

McDonald, Levy, & Taylor; Attorneys at Law, and counsel for Anderson.

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