

No. _____

**In The
Supreme Court of the United States**

S. BRUCE HIRAN and HUNG N. YI,

Petitioners,

v.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY and JELINIS, LLC,**

Respondents.

On Petition for Writ of Certiorari to the
Fourteenth Court of Appeals, Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioners' due process right was violated when the Supreme Court of Texas summarily denied their petition for writ of mandamus within no time and without providing any reasons for such denial?

2. Whether an order issued by a court that lacked subject matter jurisdiction because the party requesting the relief lacks standing, is a valid order, notwithstanding this Court's holding in *Williams v. North Carolina*, 325 U.S. 226, 267-68, 65 S. Ct. 1092, 1113 (1945), that a decree rendered by a court without jurisdiction is void?

3. Whether Petitioners were denied equal protection of law and due process of law when the trial court denied Petitioners' request to amend

pleadings without any evidence of surprise or
prejudice to opposite parties?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the courts, whose judgments or orders are subject of this petition includes:

Petitioners are S. Bruce Hiran and Hung N. Yi (Plaintiffs in the trial court and Relators in the Fourteenth Court of Appeals and the Supreme Court of Texas).

Honorable, Mike Engelhart, Presiding Judge, 151st Judicial District Court, Harris County, Texas (Respondent in the Fourteenth Court of Appeals and the Supreme Court of Texas).

Deutsche Bank National Trust Company and Jelinis, LLC (Defendants in the trial court, and Real Parties-in-Interest in the Fourteenth Court of Appeals and the Supreme Court of Texas).

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**PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF TEXAS**

Petitioners, S. Bruce Hiran and Hung N. Yi,
respectfully petition for a writ of certiorari to review
the judgment of the Supreme Court of Texas.

OPINIONS BELOW

While no opinion was issued and the decision
was unpublished, on December 21, 2018, the
Supreme Court of Texas denied the motion for
rehearing of the order denying petition for writ of
mandamus (No. 18-1029 of the Supreme Court of
Texas is reproduced in the Appendix B page 5a).
The order denying petition for writ of mandamus
was entered on November 2, 2018 (No. 18-1029 of
the Supreme Court of Texas is reproduced in the
Appendix C page 6a).

The Fourteenth Court of Appeals, Texas memorandum opinion denying petition for writ of mandamus entered on August 2, 2018 is not reported, but reproduced in the Appendix A page 1a.

The order of Hon. Judge Mike Engelhart of 151st Judicial District Court Harris County, Texas setting aside default judgment and granting new trial to Deutsche Bank entered on November 21, 2017, and order denying leave to file seconded amended petition entered on May 23, 2018, are reproduced in Appendix F page 16a, & Appendix G page 20a respectfully.

JURISDICTION

The last decision of the Supreme Court of Texas denying the motion for rehearing of the order denying petition for writ of mandamus was entered on December 21, 2018. Appendix B page 5a. This

Court has jurisdiction pursuant to 28 U.S.C. § 1257(a), and the Fourteenth Amendment of the United States Constitution.

STATUTORY PROVISIONS INVOLVED

USCS Const. Amend. 14, § 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257(a) provides:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

S. Bruce Hiran and Hung N. Yi (“Petitioners”) brought a civil action against Long Beach Mortgage Company (“Long Beach”), Deutsche Bank National Trust Company, as Trustee, in Trust for the

Registered Holders of Long Beach Mortgage Loan Trust 2006-10 (“Deutsche Bank”), and Jelinis, LLC (“Jelinis”) on allegations of fraud and breach of contract. Petitioners alleged that Long Beach fraudulently and without their knowledge switched certain pages of Texas Home Equity Note (“Note”) and Texas Home Equity Security Instrument (“Deed of Trust”) and changed the interest rate from 2.25% fixed to 7.975% adjustable interest rate.

Petitioners, in their first amended petition, nonsuited Deutsche Bank without prejudice. Long Beach was served through Secretary of State, Texas, but failed to appear and answer.

There are numerous cases through out the country where Long Beach was sued for among other causes of actions fraud and forgery and served with service of process citations but failed to enter

appearance. Many of the executives at Long Beach were criminally charged and found guilty of among other charges fraud and forgery. Many of them are serving prison sentences.

In this case at bar, the trial court granted and entered default against Long Beach. Petitioners obtained a default judgment against it. Appendix E page 13a. The trial court declared the Note and Deed of Trust void ab initio due to acts of statutory fraud committed by Long Beach. Appendix E page 14a.

Deutsche Bank moved trial court to set aside the default judgment entered against Long Beach. Deutsche Bank, in part, argued that Petitioners obtained default judgment against a defunct entity; Deutsche Bank was the mortgagee and lienholder for the subject loan since 2013; default judgment

retroactively affected the rights of Deutsche Bank; default judgment was obtained when Deutsche Bank was not a party to the lawsuit; and Deutsche Bank was a necessary party to any case or attempted judgment that affects the subject lien or property.

Petitioners objected to Deutsche Bank's motion to set aside default judgment arguing that Deutsche Bank lacked standing to set aside the default judgment and no real controversy exist between Deutsche Bank and Petitioners.

The trial court granted Deutsche Bank's motion to set aside the default judgment entered against Long Beach. Appendix F page 18a.

After trial court's order setting aside default judgment, Petitioners moved trial court for traditional and no-evidence summary judgment due

to the forged Note and Deed of Trust were void ab initio, subsequent assignment to Deutsche Bank was also void and foreclosure sale on the bases of void Note and Deed of Trust was invalid. Not one defendant ever produced any evidence to controvert the forged Note and Deed of Trust.

In its response, Deutsche Bank argued that summary judgment cannot be granted against it because no cause of action was pleaded against Deutsche Bank. Jelinis objected to the affidavit attached to Petitioners' motion for summary judgment. The trial court overruled Jelinis objections to Petitioners' summary judgment evidence, but denied Petitioners' motion for summary judgment.

Petitioners also moved trial court for leave to amend their petition and add JP Morgan as

defendant. Jelinis and Deutsche Bank objected to Petitioners request for leave to amend arguing that the request was well beyond the deadlines set forth in the docket control order. The trial court denied Petitioners leave to amend the petition.

After trial court denied Petitioners' motion for summary judgment and leave to amend, Petitioners filed a petition for writ of mandamus in the Fourteenth Court of Appeals, Texas. Petitioners argued that order setting aside the default judgment was void for lack of personal jurisdiction over Deutsche Bank, and trial court lacked subject-matter jurisdiction because Deutsche Bank lacked standing to move the court for setting aside the default judgment entered against Long Beach. Petitioners' second amended petition would not cause any surprise or prejudice to Deutsche Bank

and Jelinis. Petitioners further argued that it was an error to deny their properly verified and uncontroverted motion for summary judgment.

The Fourteenth Court of Appeals, Texas in a memorandum opinion denied Petitioners' petition for writ of mandamus. The Fourteenth Court of Appeals, Texas reasoned that Petitioners have not shown that they are entitled to mandamus relief. Appendix A page 3a. Petitioners timely requested en banc rehearing, which was denied by the court. Appendix D page 11a.

After the denial from Fourteenth Court of Appeals, on October 26, 2018, Petitioners moved the Supreme Court of Texas for a writ of mandamus. On November 2, 2018, the Supreme Court of Texas denied Petitioners' petition for writ of mandamus without providing any written explanation or

reasons for its ruling. Appendix C page 6a. Petitioners timely filed motion for rehearing and motion for *en banc* reconsideration. On December 21, 2018, without any reasoning or explanation, the Supreme Court of Texas denied Petitioners' motion for rehearing and motion for *en banc* reconsideration. Appendix B page 5a.

REASONS FOR GRANTING THE WRIT

This Court has often held that the opportunity to be heard in a meaningful manner and meaningful time is essential part of the constitutional due process right. A question of significant importance has aroused concerning a party's right to be heard in original proceedings before state supreme court.

In this case, the Supreme Court of Texas denied Petitioners' petition for writ of mandamus

within no time without any reasons or explanations. This case thus raises an important issue never addressed by this Court, but that arises frequently, as to whether the state supreme court is obligated to provide an opportunity to be heard in original proceedings like petition for writ of mandamus.

The Supreme Court of Texas did not respect Petitioners' due process right and denied them the opportunity to be heard. The right of a litigant to be heard is one of fundamental rights of due process of law.

In this case, the trial court also denied Petitioners the equal protection of law. The trial court denied Petitioners request for leave to amend petition without any evidence of prejudice or surprise to opposite parties.

Therefore, Certiorari should be granted because the decision matter of this Petition is in conflict with the constitutional principles safeguarded by this Honorable Court on the Amendment XIV to the US Constitution.

1. This Court Should Grant Certiorari to address a recurring question of opportunity to be heard in a meaningful manner in original proceedings before state supreme court.

The touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard “in a meaningful manner.” See *Loudermill v. Cleveland Bd. of Educ.*, 721 F.2d 550, 563 (6th Cir.1983), *aff'd*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985).

Many procedural due process claims are grounded on violations of state-created rights . . . ; rights that do not enjoy constitutional standing. However, the right to a hearing prior to the deprivation is of constitutional stature and does not depend upon the nature of the right violated. The rationale for granting procedural protection to an interest that does not rise to the level of a fundamental right lies at the very heart of our constitutional democracy: the prevention of arbitrary use of government power. *Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996) (emphasis added); see also *Memphis Light, Gas and Water Div. v. Craft*, 436 U.S. 1 (1978) (finding that although the underlying substantive interest is created by ‘an independent source such as state law,’ federal constitutional law determines whether

that interest rises to the level of a 'legitimate claim of entitlement' protected by the Due Process Clause" (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972))).

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Fuentes v. Shevin*, 407 U.S. 67, 80, 92 S. Ct. 1983, 1994 (1972). "The guarantees of due process call for a "hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)." *United States v. Raddatz*, 447 U.S. 667, 677, 100 S. Ct. 2406, 2413 (1980). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and

in a meaningful manner.” *McKesson Corp. v. Div. of Alcoholic Bevs. & Tobacco*, 496 U.S. 18, 39 n.22, 110 S. Ct. 2238, 2251 (1990).

It is axiomatic that due process not only provides the litigants right to come to court but also provide them an opportunity to be heard in a meaningful manner. Further, an explanation is an essential part of the judicial process. E.g., Richard A. Posner, *Divergent Paths; The Academy and the Judiciary* 162 (2016) (an opinion consisting of the single word “Affirmed” is “suggestive of a miscarriage of justice”).

Petitioners filed their petition for writ of mandamus with the Supreme Court of Texas. The Supreme Court of Texas denied Petitioners petition within no time. The Supreme Court of Texas did not provide any reasons or written explanation for

summarily denying petitioners petition for writ of mandamus. Appendix C page 6a. The Supreme Court of Texas deprived Petitioners the opportunity to be heard at a meaningful time and in a meaningful manner in violation of the Fourteenth Amendment of the US Constitution.

According to the Rule 10 of the Rules of the Supreme Court of the United States Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. Certiorari is granted only “in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.” *NLRB v.*

Pittsburgh S.S. Co., 340 U.S. 498, 502, 71 S. Ct. 453, 456 (1951).

The Supreme Court of Texas' failure to afford the litigants the opportunity to be heard in a meaningful time and meaningful manner is sufficient consideration for granting a certiorari review. This Court should grant the petition for writ of certiorari as there was a due process violation in denying the writ of mandamus without any explanation.

2. This Court Should Grant Certiorari Because the Judgment Without Jurisdiction is Void and a Void Judgment is a Legal Nullity.

Standing is a constitutional prerequisite for maintaining a suit in federal as well as in state courts. The court lacks jurisdiction if party without

standing moves court for relief. In this case, Deutsche Bank was neither defaulting party nor default judgment was entered against it but moved to set aside the default judgment entered against Long Beach.

“Standing is a constitutional prerequisite to maintaining suit in either federal or state court.” *Williams v. Lara*, 52 S.W.3d 171, 178 (Tex. 2001) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993)). Under Texas law “the standing doctrine requires that there be (1) “a real controversy between the parties” that (2) “will be actually determined by the judicial declaration sought.” *Nootsie*, 925 S.W.2d at 662 (quoting *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443-44, 36 Tex. Sup. Ct. J. 607 (Tex. 1993)). . . . Without standing, a court lacks subject matter

jurisdiction to hear the case. *Tex. Ass'n of Bus.*, 852 S.W.2d at 443.” *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005).

“A decree rendered by a court without “jurisdiction” is “void.” *Williams v. North Carolina*, 325 U.S. 226, 267-68, 65 S. Ct. 1092, 1113 (1945). “A void judgment is a legal nullity. See Black's Law Dictionary 1822 (3d ed. 1933); see also *id.*, at 1709 (9th ed. 2009).” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270, 130 S. Ct. 1367, 1377 (2010).

In this case, Long Beach was the defaulting party and default judgment obtained against it. Appendix E page 13a. Deutsche Bank was neither a defaulting party nor a default judgment was entered against it. In fact, at the time of entry of the default judgment Deutsche Bank was not even

a party to the case. There was no real controversy between Deutsche Bank and Petitioners that could be determined by the judicial declaration. Deutsche Bank lacked standing to challenge the default judgment entered against Long Beach. The order setting aside the default judgment entered against Long Beach upon Deutsche Bank's motion was outside trial court's jurisdiction and void. Therefore, the trial court lacked jurisdiction to set aside the default judgment. The order matter of this Writ of Certiorari is void and should be reversed.

3. This Court Should Grant Certiorari Because the Trial Court's Order Denying Petitioners Leave to Amend Deprived them Due Process and Equal Protection of Law.

Under Texas law, “a trial court has no discretion to refuse an amendment to pleadings and should therefore grant permission to amend pleadings unless (1) the opposing party presents evidence of surprise or prejudice, or (2) the amendment asserts a new cause of action or defense prejudicial on its face, and the opposing party objects to the amendment”. *Chapin & Chapin, Inc. v. Texas Sand & Gravel Co.*, 844 S.W.2d 664, 665 (Tex. 1992).

“An improper order prohibiting a party from amending a pleading may be set aside by mandamus when a party’s ability to present a viable claim or defense at trial is vitiated or severely compromised. *In re City of Dallas*, 445 S.W.3d 456, 462-64 (Tex. App.—Dallas 2014, orig. proceeding)”. *Rodriguez v. Rodriguez (In re Rodriguez)*, Nos. 13-

16-00411-CV, 13-16-00416-CV, 2017 Tex. App. LEXIS 770, at *13 (App.—Corpus Christi Jan. 27, 2017).

In this case, Petitioners moved trial court for leave to add JP Morgan as a defendant and plead a claim of negligent hiring against it. Petitioners wanted to add JP Morgan because JP Morgan was successor-in-interest of Long Beach. Deutsche Bank and Jelinis opposed Petitioners' request for leave to amend. Deutsche Bank claimed that Petitioners failed to state any valid grounds to allow any pleading amendment beyond the deadlines set forth in the docket control order. Jelinis also opposed Petitioners' request for leave to amend claiming that it is in violation of the docket control order.

But the standard for leave to amend in Texas is surprise or prejudice to opposite party. Jelinis did not even claim that Petitioners' request for leave to amend was a surprise or would cause prejudice to Jelinis. Deutsche Bank was well aware that JP Morgan was a successor-in-interest of assets and liabilities of Long Beach. There was no evidence of surprise or prejudice to Deutsche Bank. In fact, JP Morgan as successor-in-interest for Long Beach or Washington Mutual, was party with Deutsche Bank in many litigations.

Further, the Supreme Court of Texas gave trial court the ability to continue to deprive Petitioners the opportunity to be heard in a meaningful time and manner, and equal protection of law when the Supreme Court of Texas dismissed Petitioners petitions for writ of mandamus within

no time and without providing any reasons for summary dismissal.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court to grant the petition for writ of certiorari and for any other relief the Court deems just and equitable.

Respectfully submitted,

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