No. 18-1392

IN THE

Supreme Court of the United States

JOHN BARONE,

Petitioner,

v.

WELLS FARGO BANK N.A.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44 of this Court, John Barone respectfully petitions for rehearing of this case, to call the Court's attention to material developments that occurred after filing of the petition for writ of certiorari. This new evidence has a conspicuous effect on the totality of this case and should affect this Court's consideration. Therefore, Mr. Barone respectfully moves this Court for an order (1) vacating its June 17th, 2019, order denying his petition for a writ of certiorari, and (2) granting certiorari review.[1]

REASONS FOR GRANTING REHEARING

This case yet again brings vital issues of Constitutional law to this Court for another chance to rectify numerous manifest injustices inflicted unto Mr. Barone and his family, including multiple void judgements. Wells Fargo's unlawful acts and harassment have noticeably increased since the Barone's three petitions were filed in this Court. With each petition it has become more obvious that Fannie Mae is acting as *defacto* agent of the United Sates, making the taxpayers/government the *Real Party In Interest,* if Wells Fargo's claim of Fannie owning the Barone's loans is ever substantiated. It is undeniable that Fannie Mae entered Treasury agreements with Wells Fargo executing solely

[1] Alternatively, if the Court denies rehearing it should utilize its Constitutional mandate to right obvious manifest injustices by vacating the void judgements herein, therein Mr. Barone's state RICO action and the foreclosure. This High Court should dismiss the wrongful foreclosure, since the judgement is facially void and moreover because Wells Fargo sent notice of foreclosure cancelation, and removed all information of foreclosure from Mrs. Barone's credit reports. Additionally, this High Court should dismiss the wrongful foreclosure with prejudice as sanction for Wells Fargo's deliberate acts of Fraud against multiple Courts and the Barone's.

as ***"Financial Agent of the United States"***. (emphasis added).

Additionally, Wells Fargo's foreclosure atrocities are still running rampant, including its unlawful resetting of the sale date on the Barone's property with the assistance of Broward Foreclosure Judge Ledee, who deliberately duped and misled the Barone's. This along with the mysterious "lost" transcripts in Mr. Barone's father-in-law's appeal, in which the Broward Court had no record of a court reporter present at trial after charging for preparing and forwarding as part of the record to the 4th DCA. After exposing Wells Fargo's botched attempt to have the appeal tossed because of the "lost" transcript, Wells Fargo's CEO Tim Sloan abruptly resigned the next day. His surprise departure occurred only hours after he received a 100% vote of confidence from the largest shareholder Warren Buffett, and the Board of Directors. Within the next few days, the elite attorney responsible for handling the appeal for Wells Fargo, was no longer with the firm.[2]

Just a few days ago, Wells Fargo took the harassment to another level, by falsely accusing Mrs. Barone and her father of threatening and intimidating people in the Broward Foreclosure Court. Meanwhile in reality, these accusations are baseless, not to mention Mr. Nehrke is an elderly veteran who has suffered 3 previous heart attacks, has skin cancer and has bad shakes from Parkinson's disease which is progressively getting worse by the day, not the picture of intimidation. They along with an attorney friend were harassed, physically pushed aside and threatened with handcuffs while court officers led Mr. Nehrke down the hall to talk.

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[2] See *Nehrke v. Wells Fargo*, FL 4th DCA, No. 4D18-2368.

Wells Fargo objected to Mrs. Barone assisting her father, when she has been allowed in all previous hearings and trials, including a recent hearing. In that hearing Judge Ledee curiously asserted that if he granted Mr. Nehrke's motion to strike Wells Fargo's grossly late answer to his affirmative defenses, then he would not be able to use his affirmative defenses at trial.[3] Assisting in concealing Wells Fargo's wrongdoings and furthering its unlawful schemes is getting very sloppy and blatantly obvious. In fact, due to the governments control of Fannie Mae, every unlawful act by Wells Fargo and its cohorts against the Barone's, their family and countless others puts the taxpayers further at RISK to bear the burden. This fact can no longer be overlooked by this High Court, especially because the lower Courts have assisted in concealing Wells Fargo's wrongdoings against the Barone's and their family with multiple void judgements. This High Court has long held that void judgements are *"nullities", "can be attacked at any time"* and accordingly, *"A court* ***cannot*** *confer jurisdiction where none existed and* ***cannot*** *make a void proceeding valid." See Old Wayne Mut L. Assoc. v McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907); *Elliot v. Piersol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) (emphasis added).

Moreover, Wells Fargo has failed to respond to its foreclosure cancellation which removed the foreclosure from credit reports, but it decided to reset a sale date. This directly affects the outcome of this litigation, as the district Court utilized Wells Fargo's false and misleading information, including its void foreclosure judgment to unfairly deprive Mr. Barone of his Constitutional rights. Additionally, Wells Fargo wrongfully invoked the foreclosure Court jurisdiction from the outset, as it

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[3] *Wells Fargo v. Nehrke,* , 17th Circ. CACE18015052.

was never an Article 3 holder, and it failed to join the Real Party In Interest as required under Florida law.

Furthermore, Wells Fargo never responded to the foreclosure petition (17-1601) or Mr. Barone's state RICO petition (18-783), but in an obvious effort to speed this petition through this Court, it filed a waiver of right to respond and the petition was quickly distributed and once again denied without an opinion. Thus, leaving countless facially void judgements still infecting the justice system and marring our Constitutional society.

I. Wells Fargo With Broward Foreclosure Court Assistance Continues Its RICO Schemes and Harassment of Mr. Barone and His Family, Has Unlawfully Set a New Sale Date and Has Failed To Respond To Its Foreclosure Cancellation Notice In Which It Has Updated Credit Reports to Remove Foreclosure

Wells Fargo with the assistance of Judge Ledee unlawfully reset a sale date on the Barone's property. Mrs. Barone was battling pneumonia and attempted to reschedule the hearing to reset the sale, but was forwarded to Judge Ledee's assistant after Wells Fargo's attorney advised that she was ordered by Wells Fargo to not reschedule the hearing. Mrs. Barone was advised that Judge Ledee would call her later in the evening. Judge Ledee called around 7:38pm on May 20th and advised Mrs. Barone that she did not have to attend the hearing because he was going to reschedule the hearing, but he had to reschedule the hearing with Wells Fargo's representative present. He advised that he was going to call between 8:30-9am the next morning so she should keep her phone next to her. No call came from the Court the next morning, and when Mrs. Barone called the

judge's assistant around 9:42am, the assistant advised that the judge called it up and rescheduled the hearing and they would receive something in the mail. To their surprise, after continually checking the docket, a few days later it showed an order granting Wells Fargo's wrongful motion to reset the sale. Additionally, the Barone's advised Wells Fargo that they were *never* served its motion to reschedule the sale date, nor were the Barone's contacted by Wells Fargo to set the hearing.

Moreover, on May 20th, 2019, the Barone's emailed a copy of Wells Fargo's August 6th, 2018, Foreclosure Cancelation notice, which states ***"After the foreclosure on your mortgage was cancelled"***, to its attorney who advised that she forwarded it to Wells Fargo and would advise when she receives a response. (emphasis added) (*See* Appx. A1.). To this day Wells Fargo has failed to respond and/or give advisement on the foreclosure cancelation notice, but has removed the foreclosure and negative issues from credit reports while wrongfully pushing forward with its intent to sell the Barone's property.

Furthermore, Wells Fargo mislead homeowners, including the Barone's into believing they were entering into traditional mortgages, just as it mislead them into believing its intent was to get their loan modified. These loans were undisclosed premeditated securities transactions, or RMBS, which were utilized to defraud homeowners and investors in violation of SEC Rule 10b-5 codified under *17 CFR § 240.10b-5 Employment of manipulative and deceptive devices.* These undisclosed transactions include secret default insurances, derivatives (CDS & CDOs) and rehypothecations that unlawfully sold and/or pledged property without consent of the Legal Owners. These unlawful pledges are also in

violation of NEMO DAT QUOD NON HABET, which states that *"no one gives what they don't have"*, so Wells Fargo clearly has no right to pledge properties it does not own. The modification scheme which Wells Fargo utilized against the Barone's and countless others was outlined by the former head inspector of TARP, who oversaw the HAMP program.[4]

II. Fannie Mae and Wells Fargo Treasury Agreement Substantiates The Government's Involvement In Countless Wrongful Foreclosures

Wells Fargo's Treasury agreements entered into with Fannie Mae, clearly show that Fannie was acting solely as ***"Financial Agent of the United States"*** and substantiates the arguments within the petition.[5] This agreement further substantiates Fannie Mae's "practical reality" as a *defacto* agent of the government concurring with this High Court's holdings in *Dept. of Transportation v. Assoc. of American Railroads,* 135 S. Ct. 1225 (2015) and *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 115 S. Ct. 961, 130 L. Ed. 2d 902 (1995) as outlined in the petition. *See* also *Sisti v. Federal Housing Finance Agency*, 2018 WL 3655578 (D.R.I. Aug. 2, 2018).[6] The Constitution protects Americans and their property by prohibiting "taking" and use by the government without just compensation. It is undeniable that the government has been directly benefiting financially from the Net Worth Sweep which has been

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[4] See *Neil Barofsky*, ex- S.I.G. for TARP, book, *BAILOUT*, Ch. 8, *"Foaming the Runway"*.

[5] https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Documents_Contracts_Agreements/wells-fargobankna_Redacted.pdf

[6] https://ecf.rid.uscourts.gov/cgi-bin/show_public_doc?2017cv0005-39

syphoning billions of dollars from Fannie Mae since 2012, and includes monies from millions of wrongful foreclosures of Americans homes. More concerning is that Wells Fargo's own spokesman noted, in a CNN December 2018 article, that Fannie loans were eligible for modification even before the borrower requested one.[7]

III. Wells Fargo was NEVER a UCC Article 3 Holder, Failed To Comply With FL Law and Deliberately Provided Misleading Information To The District Court

Wells Fargo is acting solely as an agent and is NOT a "holder" of the Note, because *the UCC considers the principal to be the holder when an agent is in possession of the principal's property.* See *In re Phillips*, 491 B.R. 255, 263 (Bankr. D. Nev. 2013) ("Thus, a person is a *"holder"* of a negotiable instrument *when it is in the physical possession of his or her agent."*). (emphasis added). Accordingly, ("Negotiation always requires a change in possession of the instrument because *nobody can be a holder without possessing the instrument, either directly or through an agent.)* § 673.2011, Fla. Stat. Ann. (emphasis added). See also, *Bankers Trust (Delaware) v. 236 Beltway Inv.*, 865 F. Supp. 1186, 1195 (E.D. Va. 1994) *(the UCC "sensibly recognizes that a party has constructive possession of a negotiable instrument when it is held by the party's agent..."* [internal citations omitted])(emphasis added). The government through its financial agent Fannie Mae, always remains in constructive possession of the note, NOT the servicer Wells Fargo. Additionally, *("If a transferor purports to transfer less than the entire instrument, negotiation of the instru-*

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[7]See Matt Egan, CNN, https://www.cnn.com/2018/12/12/business/wells-fargo-foreclosure-nightmare/index.html

ment does not occur.") § 673.2031(4), Fla. Stat. (emphasis added), and accordingly, under Florida law a party can only become an Article 3 holder by way of "negotiation"—*which involves a transfer of the entire bundle of rights in the instrument.* § 673.2011, Fla. Stat. (defining negotiation)(emphasis added). Even if Fannie Mae gave Wells Fargo possession of the Note to enforce, *this is NOT a negotiation under Florida law* and was never intended to be. (emphasis added). See Fannie Mae Servicing Guide, Part I, Chapter 2, Section 202.06, Note Holder Status for Legal Proceedings Conducted in the Servicer's Name, *"Fannie Mae is at all times the owner of the mortgage note, whether the note is in Fannie Mae's portfolio or whether owned as trustee..."*.[8] Therefore, there was no negotiation/transfer of the entire bundle of rights under Florida law, so Wells Fargo was never a holder or real party in interest depriving it of standing to bring foreclosure, even if it proved it was in possession of a properly endorsed note, which it did not.

Furthermore, Wells Fargo failed to comply with Florida law as the 4th DCA made clear in *Elston/Leetsdale, LLC v. CWCapital Asset Mgmt. LLC*, 87 So. 3d 14 (Fla. 4th DCA 2012) a servicer/agent may only be considered as a party to a foreclosure action if (1) its principal/real party in interest has joined in or (2) ratified its conduct by authorizing its bringing of the action. Wells Fargo never joined the Real Party In Interest, nor did it provide any documentation from such party authorizing the foreclosure action against the Barone's. Additionally, It is well established law that the mortgage follows the note, but the note never follows the mortgage, so Wells Fargo could not have owned the mortgage and had standing to foreclose while claiming that Fannie

[8] https://deadlyclear.files.wordpress.com/2017/09

Mae owns the note. This Court made this clear in *Carpenter v. Longan*, 83 U.S. 271 (1872) *"the note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity." (emphasis added).* Since MERS, securitization and rehypothecation were utilized with the Barone's loan substantiates that the mortgage and the note were separated in violation of this Supreme Court's long-held direction.

Accordingly, Wells Fargo knowingly supplied misleading information and withheld pertinent information from the Courts, including the district Court, which directly lead to the wrongful judgement herein, of which no claims can be barred by a facially void foreclosure judgement. Wells Fargo deliberately defrauded the Courts and the Barone's and as such, (*'It is a principle in chancery, that he who asks relief must have acted in good faith. The equitable powers of this court can never be exerted in behalf of one who has acted fraudulently, or who by deceit or any unfair means has gained an advantage. To aid a party in such a case would make this court the abetter of iniquity.' Bein v. Heath*, 6 How. 228, 247, 12 L.Ed. 416 (1848); and (*'A court of equity acts only when and as conscience commands; and, if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses, and whatever use he may make of them in a court of law, he will be held remediless in a court of equity.'*) *Deweese v. Reinhard*, 165 U.S. 386, 390, 17 S.Ct. 340, 341, 41 L.Ed. 757 (1897). (emphasis added). This High Court at a minimum should right the numerous wrongs inflicted by Wells Fargo unto Mr. Barone and his family by vacating the void judgements.

CONCLUSION

For the forgoing reasons, the petition for rehearing should be granted.[9]

Respectfully submitted,

By: _____

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July 7th, 2019

CERTIFICATE OF PRO SE PARTY

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

On July 7th, 2019

By: _____

John Barone
Pro Se Petitioner

[9] In the alternative, the aforementioned actions noted on Pg. 1, Fn. 1 herein should be ordered.

Additional material from this filing is available in the Clerk's Office.