

5/6/2019

18-1407

No. _____

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

ANITA M. BARROW,

Petitioner,

v.

B. GRANT WILLIS; MARGARET GIFFORD;
SOTHEBY INTERNATIONAL REALTY, INC.;
HERBERT A. BARROW, JR.; WILLINDA POWELL
GRAY; MICHELLE MALDONADO, ESQ.; GEORGE J.
MACKOUL, ESQ.; BRIAN MOONEY; MOONEY
PLANNING COLLABORATIVE, LLC; MICHAEL C.
HARLOW; SDSB INVESTMENT GROUP, LCC;
MUTUAL BANK; BRUCE DUPHILLY; JOHN AND
JANE DOE; JENNIFER S.D. ROBERTS; DOUGLAS
AZARIAN; FALMOUTH REALTY INVESTMENTS, LLC;
DAVID H. BENTON; BARNSTABLE COUNTY
DEPARTMENT OF HEALTH AND ENVIRONMENT;
KENDALL AYRES; KINLIN GROVER REAL ESTATE,

Respondents.

**On Petition For Writ Of Certiorari
To The First Circuit Court
28 U.S.C. § 2403(a) May Apply**

PETITION FOR WRIT OF CERTIORARI

May 6, 2019

ANITA M. BARROW
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RECEIVED

MAY - 8 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

The questions presented for review are:

1. Should the First Circuit Court have applied the doctrine of equitable tolling regarding Appellant's tardy brief and heard the merits of the case with full consideration of extraordinary circumstances and evidence presenting in this case of on-going discrimination prohibited by Congressional Intent and established case law upheld by the United States Supreme Court and the federal circuits?
2. Does Congress, the FHA, and well established precedent law held by the Supreme Court of the United States and federal circuit courts permit a plaintiff's case to be dismissed by a federal district court for failure to state a claim when the Complaint by a pro-se litigant and African American female is not thread bare and exceeds the minima requirements of Article III of the Constitution to retain jurisdiction of the Court?
3. Is discrimination prohibited by the FHA, the Civil Rights Act of 1866, and violation of Congressional Intent, and the Constitution of the United States of America established when the MDC, Appellate Court of the Commonwealth of Massachusetts, and Barnstable Probate Court award attorneys' fees to Respondents?
4. Whether violation of Congressional Intent and FHA Sections 42 U.S.C. § 3617 and 24 C.F.R. § 600.100 apply to this case in light of Respondents' acts and the processing of this case in the MDC, Probate and Appeals Court?

QUESTIONS PRESENTED—Continued

5. Whether Congressional Intent and FHA Sections 42 U.S.C. § 3617 and 24 C.F.R. § 600.100 apply to this case when the Appeals Court of the Commonwealth of Massachusetts, “Appeals Court,” awards attorneys’ fees to certain Respondents ruling Appellant’s appeal as ‘frivolous’?
6. Whether the federal FHA amended may be expanded in its scope in the interest of the public to establish urgently needed national uniformity—protections for heirs properties owned as cotenants in common sold by partition of the court, and protection of due process rights afforded all citizens of the United States while under warrant of sale by the court?

PARTIES TO THE PROCEEDING

Petitioner is Anita M. Barrow, a pro-se litigant. Respondents are: B. Grant Willis; Margaret Gifford; Sotheby International Realty; Herbert A. Barrow, Jr.; Willinda Powell Gray; Michelle Maldonado, Esq.; George Mackoul, Esq.; Brian Mooney; Mooney Planning Collaborative, LLC; SDSB Investment Group; Michael C. Harlow; Mutual Bank; Bruce DuPhilly; Jennifer Roberts; Kinlin Grover Real Estate; Falmouth Realty Investments; David Benton; Barnstable County Department of Health; Kendall Ayres; Douglas Azarian; Kinlin Grover Real Estate; and Falmouth Realty Investments.

RULE 29.4 STATEMENT

This petition draws into question the constitutionality of certain applications of a federal statute, as interpreted by the state courts below. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201, 42 U.S.C. § 3613, and the Court's supplemental jurisdiction over Plaintiff's state law claims in her Answer and Counterclaims (Exhibit 2 to her Application For An Extension To Extend Time To File Writ of Certiorari) under 42 U.S.C. § 1367. This court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 (Federal question). 28 U.S.C. § 2403(a) may apply and the Fair Housing Act as amended and the 1866 Civil Rights Act.

RULE 29.4 STATEMENT—Continued

On February 28, 2019, Justice Steven Bryer granted Petitioner's application of time within which to file a petition for writ of certiorari in this case extending the time to and including May 06, 2019 and the Application was docketed in this Court as Case Number 18A882.

Accordingly, on April 08, 2019, **Notice # 1** of this case, including a copy Petitioner's Application For An Extension Of Time To File Writ Of Certiorari, with Appendices was served on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001 and received by the Solicitor General on April 09, 2019 at the docking station, 3601 Pennsy Dr., Hyattsville, MD 20785. Copy and receipt of same was served and received by the First Circuit Court and all parties to this case electronically, hereinafter, "Respondents," on April 09, 2019.

Copy and receipt of same was served and received by the Appeals Court of the Commonwealth of Massachusetts and all parties to this case electronically, on February 26, 2019.

Copy of **Notice # 1** to the Solicitor General with proof of service was received by the US Supreme Court on April 10, 2019, and inadvertently returned to Petitioner by Clerk of the Court instead of filed and providing Justice Breyer and the Panel with Copies for same. Respondent spoke with the Clerk and was told to

RULE 29.4 STATEMENT—Continued

resend Copy of Notice # 1 to the Solicitor General formerly submitted to the Court and it would be filed and submitted to Justice Breyer and submitted to the panel along with her Petition For Writ Of Certiorari.

The court, as far as Petitioner is aware, pursuant to 28 U.S.C. §2403(a), has not certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question.

Notice # 2 To the Office of the Solicitor General, Evidence of Discrimination in Violation of Congressional Intent before the First Circuit Court, the US District Court of Massachusetts, and the Appeals Court of the Commonwealth of Massachusetts, "**No-tice # 2**," evoking the jurisdiction and urgent need of intervention by this Court and the Office of the Solicitor General, due to on-going discrimination occurring in violation of the FHA, the Civil Rights Act, Congressional Intent, and the Constitution of the United States will be sent to the Solicitor General and copied to the above aforementioned courts and all parties in this case just prior to the filing of this Petition with this Court. Copies of receipt of service and **Notice # 2** by all parties and lower courts will be sent to the Clerk of this Court for filing.

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PETITION FOR WRIT OF CERTIORARI

This is a case in part of first impression and national importance affecting the entire United States housing industry when residential property mortgaged by a federal savings and loan bank, owned by remaindermen as equal cotenants in common is unfairly sold by realtor and partition while under warrant of a probate court and commissioner. It raises concerns about who is protected, who can be held liable, and what kind of conduct is actionable before and after a property is sold when lower courts blatantly disregard well-established Supreme Court decisions, precedent setting case law in the federal circuits, and Congressional Intent as set forth under essential elements of the FHA and Civil Rights Act of 1866. It concerns who can be liable and what kind of conduct is actionable when a property is sold unfairly under both federal and state law and when the lower courts and Respondents are alleged to engage in discriminatory acts expressly prohibited by 42 U.S.C. § 3601 *et seq.* and the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982; 1983, and state law, including and not limited to, General Laws of the Commonwealth of Massachusetts, Part III, Title III, Chapter 242, which mandates partition and sales of property while under warrant of sale by a probate court and commissioner shall be fair, just, and equal.

It raises serious questions about the application of equitable tolling and unusual circumstances when the First Circuit dismissed Petitioner's appeal with prejudice pursuant to a local processing Rule, 3.0(b), after

Respondent filed a tardy brief without consideration of equitable tolling, the merits of the case, and violation of Congressional intent. Absent direct intervention by this Court; the mandate of the First Circuit court permits the lower courts and Respondents to disregard Congressional intent and further engage in discriminatory acts strictly prohibited by essential regulations of the FHA including Sections 42 U.S.C. § 3617 discrimination by retaliation and directly interfering with her with the rights and privileges accorded to her under the Act as Congress intended and 24 CFR 100.600 Quid Pro Quo Harassment.

Petitioner Anita Barrow respectfully petitions for a writ of certiorari to review judgments of the United States Court of Appeals for the First Circuit, the United States District Court of Massachusetts, the Appeals Court of the Commonwealth of Massachusetts, and the Barnstable Probate Court. This is a most urgent matter. This case and the records of the lower court from the Complaint (App. 5. Petitioners Application to Extend Time, Docket, 18A882) demonstrate intervention by this Court is urgently needed. Execution of the Mandate and Orders issued by all courts in this case shown in the Appendices; may not only permit Respondents to unjustly engage in on-going discriminatory actions prohibited under the FHA and Civil Rights Act of 1866 as upheld by Supreme Court, the Constitution of the United States and Congressional intent to protect any plaintiff from such harm; it may also permit Respondents to engage in a civil conspiracy, pursuant to 18 U.S. Code § 241, to deprive

Appellant of civil rights guaranteed to her by the Constitution of the United States of America. In doing so the interest of the public and public trust in the judiciary will be harmed.

As a matter of public interest, this case demonstrates that the lower courts do not apply established rules of Massachusetts rules of civil procedure, Appellate rules of civil procedure, or mandatory Massachusetts General Laws in holding fair, just, and equal partition sales or hearing invoking “WE THE PEOPLE’S” rights to seek relief under the FHA and Civil Rights Act of 1866.



OPINIONS BELOW

The opinions of the First Circuit Court of Appeals, issued on October 15, 2018 (App. 1-3.) and December 07, 2018 (App. 63-65.) are reported on the Docket Sheet in Case # 17-1819. The October 15, 2018 Order decided by a three (3) member panel dismissed the case with prejudice due to Petitioner filing a tardy brief in violation of First Circuit Local Rule 3.0(b). The December 07, 2018 Order (App. 63-65) issued by a three (3) member panel denied Petitioner’s Motion for Reconsideration of the 10/15/2018 Panel Order To Dismiss With Prejudice For Failure To Timely File The Brief.

The United States District Court of Massachusetts, “MDC,” decisions dismissing Petitioner’s Complaint with prejudice for failure to state a claim and awarding attorney fees to Respondents are found by

citation, *Barrow v. Barrow*, No. 16-cv-11493, 2016 U.S. Dist. LEXIS 164330, 2016 WL 6996996 (D. Mass. Nov. 29, 2016) and in the Appendices: (App. 4-24) November 29, 2016 Memorandum and Order on Plaintiff's Motion For Lis Pendens, Plaintiff Motions To Strike, And Defendant's Motion To Dismiss, granted Defendant's motion to dismiss and denied Plaintiff's motion for lis pendens. (App. 25-36) July 06, 2017 Order of Dismissal and Memorandum and Order on Defendant Willis' Motion To Dismiss For Failure To State A Claim, granted. (App. 37-53) July 10, 2017 Memorandum and Order on Defendant Azarian Motion For Attorney's Fees, granted. (App. 54-56) July 10, 2017 Memorandum and Order on Defendant Ayres Motion For Sanctions, attorney fees granted; sanctions denied. (App. 57-59) July 10, 2017 Memorandum and Order on Defendant Barnstable County Department of Health and Environment's Motion For Sanctions, denied without prejudice to renew. (App. 60-62) November 28, 2017 Memorandum and Order on Defendant Mackoul's Renewed Motion For Attorney's Fees, granted.

(App. 66-68) December 29, 2016 Commonwealth of Massachusetts Barnstable County Probate, "Probate Court," Order, Decree Amended, Docket Number BA14E0060PP, and (App. 69-73) Memorandum and Decision Of Order (On Petitioner's Motion to Alter and Amend the Judgment Filed November 2016) granting Petitioners Motion for attorneys fees of \$29,505.96, reducing Petitioner's unequal share of the proceeds from sale of the Property by partition, from \$85,395.78 to \$55,889.80 opining Petitioner drove the costs of

litigation up when she “filed a 68 page civil rights law suit in federal district court naming Petitioners [sic. Respondents Herbert A. Barrow, Jr. and Willinda Powell Gray], their attorney, commissioner and twenty more defendants (App. 70).” (App. 74-87) Transcripts from the Record of the September 12, 2016 hearing, “trial,” from which the Decree Amended, (App. 66-68), is based upon and didacted sections from other Orders issued in the Probate Court on various dates demonstrating prohibited acts engaged in by the Probate Court and the Respondents strictly prohibited by the FHA and specifically, under sections 42 U.S.C. § 3617 and 24 C.F.R. § 100.600, violating Congressional intent and Congressional limitations placed on any defendant or any vicarious party to a FHA claim with respect to how a plaintiff claiming her rights under the FHA shall be treated by any court or respondent to a plaintiff’s claims.

(App. 88-90) Commonwealth of Massachusetts Appeals Court Memorandum and Order Pursuant To Rule 1: 28, Amended Decree (App. 66-68) affirmed. Attorney fees awarded to Respondents Herbert A. Barrow, Jr. and Willinda Powell Gray, affirmed. Petitioner’s appeal is “frivolous.”

◆

JURISDICTION

The First Circuit Court entered its judgment on October 15, 2018 (App. 1-3), and denied Petitioner’s Motion for Reconsideration of the Judgement on

December 07, 2018 (App. 63-65.). Petitioner was granted a (60) day extension to file petition for writ of certiorari until and on May 06, 2019 by Justice Breyer. Petitioner timely filed this petition for writ of certiorari on May 06, 2019. This Court has jurisdiction under 28 U.S. Code § 1254.

STATUTORY PROVISIONS INVOLVED

The federal Fair Housing Act, of 1968, as amended, and recently amended in October 2016 to include forced sales of residential property, 42 U.S.C. § 3601, *et. seq.*, play an important role in this case as does the Civil Rights Act of 1866, *inter alia* 42 U.S.C. §§ 1981, 1982 1983.

The FHA applies to the sale of the heirs property in question in this case under Section 42 U.S.C. § 3603 whereby, the mortgage held on the Property, at the time of sale and all times relevant to this action, was held by Defendant Mutual Bank, a federal savings and loan bank.

Under 42 U.S.C. § 3602 Agents of Discrimination, all parties to Respondent's Complaint and all courts are subject to compliancy under Fair Housing Law. Under Section 42 U.S.C. 3604 it is illegal to set different terms, conditions, or privileges during a residential sale of a Property listed with a real estate broker:

“To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.”

42 U.S.C. § 3605 prohibits discrimination by persons or other entities whose business includes engaging in residential real estate-related transactions. U.S.C. § 3605 further prohibits discrimination by persons or other entities whose business includes engaging in residential real estate-related transactions.

42 U.S.C. § 3617 states in relevant part:

“It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title.

(Pub. L. 90-284, title VIII, § 818, formerly § 817, Apr. 11, 1968, 82 Stat. 89; renumbered § 818 and amended Pub. L. 100-430, §§ 8(1), 10, Sept. 13, 1988, 102 Stat. 1625, 1635.)”

§ 100.600 Quid pro quo and hostile environment harassment sets forth.

(a) **General.** Quid pro quo and hostile environment harassment because of race, color, . . . sex . . . may violate sections 804, 805, 806 or 818 of the Act, depending on the conduct.

The same conduct may violate one or more of these provisions.

(1) ***Quid pro quo harassment.*** Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to: The sale, rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.

(2) ***Hostile environment harassment.*** Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities,

or of the residential real-estate transaction.

(i) *Totality of the circumstances.*

Whether hostile environment harassment exists depends upon the totality of the circumstances.

(A) Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.

(B) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damages to which an aggrieved person may be entitled.

(C) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person's position.

(ii) ***Title VII affirmative defense.*** The affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor under Title VII of the Civil Rights Act of 1964 does not apply to cases brought pursuant to the Fair Housing Act.

(b) ***Type of conduct.*** Harassment can be written, verbal, or other conduct, and does not require physical contact.

(c) ***Number of incidents.*** A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidences a quid pro quo.

The Civil Rights Act of 1866 sets forth.

42 U.S.C. § 1981 provides in pertinent part: "(a) Statement of equal rights

"all persons within the jurisdiction of the United States shall have the right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of

persons, and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." "Protection against impairment: "The rights protected by this section are protected against impairment by non-government discrimination and impairment under color of State Law."

42 U.S.C. § 1982 provides in pertinent part:

"All citizens of the United States shall have the same right, in every state and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, and convey real and personal Property."

"Protection against impairment

"The rights protected by this section are protected against impairment by non-government discrimination and impairment under color of State Law."

42 U.S.C. § 1983 provides in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at

law, suit in equity, or other proper proceeding for redress . . . ”

Additionally, 28 U.S.C. § 3613 (enforcement by private persons); 28 U.S.C. § 1367 (supplementary jurisdiction) and 28 U.S.C. §§ 2201 and 2202 (declaratory judgment).

A full review of statutory provisions relevant to this case have been provided to this Court, the Office of the Solicitor General, and Justice Breyer in Petitioner’s Application For Extension To File Writ of Certiorari, in Petitioner’s MDC Complaint filed in this Court in (App. 5), see NO: 18A882, docketed in this Court on February 28, 2019. Petitioner’s MDC Complaint is also available in the record of the MDC, Item # 1, filed 07/ 18/16.

INTRODUCTION

The Fair Housing Act 42 U.S.C. § 3601 *et seq.*, “FHA” or “Act”; was first enacted in 1968 to prohibit discrimination in connection with the listings, selling, advertising, and real estate services related to the sale of a residential home. Following its inception, the Act has been broadly construed by courts and Congress to make its provisions available to members of protected classes, non-protected classes and consumers. In *Traficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205 (1972) this Court held any person aggrieved under the FHA including members on non-protected classes may be

aggrieved and seek protection pursuant to the Equal Protection Act of the Constitution:

The definition in § 810(a) of “person aggrieved,” as “*any* person who claims to have been injured by a discriminatory housing practice,” shows a congressional intention to define standing as broadly as is permitted by Article III of the Constitution, . . . have standing to sue under § 810(a). Pp. 409 U. S. 208-212.

Effective in October 2016; the Fair Housing Act was amended and broadened in its scope by this Court in *Bank of America v. City of Miami, Florida*, No. 15-1111, May 2017, to include forced sales of mortgaged residential properties and cities as aggrieved parties under the FHA when discrimination and proximate cause of the discrimination prohibited by the FHA are shown.

Petitioner asks this Court to consider the prohibited discrimination Respondents engaged in the Orders of the Court and Respondents actions to the detriment of the Petitioner, specified in great detail in the MDC Complaint, (App. 5 Petitioner’s Application To Extend Time To File Writ of Certiorari), within the context of intentional discrimination of the FHA because there is no reasonable explanation for said actions. The Complaint, (App. 5. Petitioners Application to Extend Time, Docket, 18A882) alleges, and proves through voluminous documents, over 600 pages of evidence undisputed by Plaintiffs in the Exhibits to the Complaint, (available in the DMC in Item # 7, filed on

8/10/2016), that Respondents concurrently engaged in violations of the FHA and Civil Rights Act of 1866 and actions in tort, violating both state law, while discriminating against Petitioner: including and not limited to, tortious acts of fraud, waste, breach of fiduciary duty, and breach of contract in the sense that the Property was mortgaged and sold in violation of clear and plain terms and conditions of the testatrix, Petitioner's mother's Will, the controlling document of the sale.

Petitioner further asks this Court to consider discrimination of this case within the broad standing of the FHA and the application of the FHA newly amended in October 2016 to include forced sales by foreclosure in *Bank of America v. City of Miami, Florida*, to forced sales by partition of heirs properties owned as cotenants in common to both members of protected classes, such as Petitioner, an African American female, applies to non-protected classes.

STATEMENT

Hamer v. Neighborhood Services of Chicago v. Neighborhood Housing Service of Chicago, et al., certiorari to the United States Court of Appeals for the Seventh Circuit, No. 16-658. Argued October 10, 2017—Decided November 8, 2017, and in *Pioneer Investment Services v. Brunswick Associates Limited Partnership et al.*, No. 91-1695, ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, Argued November 30, 1992 and

decided March 24, 1993, regarding acceptance of a tardy brief and the injustice of dismissal of the appeal with prejudice when not considered within the concepts of injustice and equitable tolling on the merits. In a unanimous decision, this Court in *Hamer v. Neighborhood Housing Services of Chicago et al* ruled a federal circuit court errs in relying on a local court made rule, such as **1st Circuit Rule 3.0(b)**, to dismiss Appellant's appeal with prejudice and deny an extension of time to file a brief. *Hamer* states mandatory local processing rules "**may be waived or forfeited. If a time prescription governing the transfer of adjudicatory authority from one Article III court to another appears in a statute, the limitation is jurisdictional; otherwise, the time specification fits within the claim-processing category.**"

In examining good cause and excusable neglect, SCOTUS in the Pioneer Investment Services Company examined **Federal R. Civ. P. 9006(b)(1) and Federal Rule of Civil Procedure (6)(b)** concluding federal circuit courts may uphold late filings such as Appellant's tardy brief, where appropriate, federal court late filings caused "by inadvertence, mistake, or carelessness" as well as by good cause shown, and intervening circumstances beyond the party's control.

In sum, if left uncorrected, this case will have unjust and far reaching effects on the interests of the public in creating uniform standards nationally to afford due process rights for co-tenant heirs in common, for "any aggrieved party," during partition sales of their property and adoption of uniform rights for any

plaintiff addressing discrimination during the partition sale.

The Complaint as written (App. 5. Pet. Application For Extension Of time To File Writ of Certiorari) is not thread bare and exceeds the minima requirement of Article III of the Constitution. Petitioner believes the MDC Judge abused his discretion in dismissing the Complaint and awarding attorney fees to attorneys (App. 4-24; App. 25; App. 26-36; App. 37-53; App. 54-56; App. 57-59; App. 60-62) in violation of the state and federal FHA. The District Court Judge dismissed the case prior to any discovery, depositions, or requiring Respondents to admit or deny the allegations made against them in the Complaint. The Respondents did not submit any certification or adequate certification by rules of the Court admitting or denying the allegations made against them. Pursuant to Federal Rule of Appellate Procedure 8(b)(1) and (2), Respondents are required to admit or deny the charges alleged against them and if Respondents do not admit or deny, Federal Rule of Appellate Procedure 8(b)(6) states as follows:

(6) *Effect of Failing to Deny.* An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

Petitioner believes that this case demonstrates public need of national and uniform relief for any party is urgently needed. As also learned by HUD, plaintiffs, like Petitioner, who attempt to assert their civil rights

are often retaliated against and harassed nationally promulgating HUD to take action and create § 100.600 Quid pro quo and hostile environment harassment, a new regulation effective in October 2016, to combat such discrimination as Congress intended for “any party,” so aggrieved.

Petitioner respectfully urges this Court to read her Complaint, App. 5) filed with her Application To Extend Time To File the Writ of Certiorari as it tells the story in detail and within the context of federal and state law of how discrimination occurs in a sale by partition and an attempted private sale of property owned in equal shares by cotenant heirs in common. It demonstrates in detail the compelling need for intervention by this Court and an urgent need for reform in Massachusetts and makes a case for national uniform reform and in conjunction with the Uniform Probate Act in states like Massachusetts where it has been adopted.

The property, unjustly sold in this case, is located on Cape Cod, Massachusetts and is considered a coastal property in the sense that it is located in a community labeled by realtors as “a jewel” within a 3-5 minute walk away from a private beach. Cape Cod is a highly desirable tourist and second home area. Many of the long term residents of Cape Cod have inherited land and property that does not afford protections in the estate from developers contacting their family members who own property through inheritance as heirs in common and entice them to file a partition action so the property can be developed. The intrusion by developers is epidemic and has caused many families

to lose their properties causing great despair—a cause of depression, suicide, and drug use—because they do not have the money to fight the partition because the equity of the estate is used up in the legal processes.

The facts before the First Circuit Court and the lower courts, the MDC, the Appeals Court of the Commonwealth of Massachusetts, and the Probate Courts on the merits as set forth in the Complaint and the Exhibits to it demonstrate that the partition process is not fair. The Probate Court itself does not follow Massachusetts Rules of Civil Procedures as Pet. Complaint, (App5. demonstrates. Both state law and the Probate Court lack jurisdiction by state law to hear or award damages in this case, the court did not follow state law.

This case is pretty straightforward in the sense that it does not challenge contradictions or uniformity in state courts, federal courts, or Supreme Court rulings in applications of the FHA.

Rather, this petition for writ attempts to show this Court how, “we the people,” urgently need this case to be heard for intervention to uphold Congressional Intent by consideration of the protections afforded under the FHA and Civil Rights Act of 1866 to be broadly applied, to any party as this Court has ruled in precedent establishing cases and Congress has intended, to any type of discriminatory sale of residential property by realtor, traditional or forced when owned by heirs in common, within the parameters of existing FHA regulations.

It asks the Court to examine pro-se litigants rights to be heard and granted due process of law.

Petitioner relies on the Complaint (App. 5 of Pet. Application For Extension To File Petition For Writ of Certiorari) to fully address statements of the facts, public interest and need for national reform in this section. It documents intentional discretionary intent and disparate impact in due process when co-tenant heirs in common, members of protected classes, are forced to sell a property by partition in lower courts who do not follow state and federal law.



REASONS FOR GRANTING THE WRIT

Petitioner believes this case satisfies the standard criteria for certiorari and demonstrates an urgent need for this Court's intervention to ensure rulings by the First Circuit Court are in (a.) conformity with this Court's opinions on acceptance of tardy briefs; (b.) to ensure the lower courts rule in compliance with the Supremacy laws of the United States Constitution; and follow their own state law under the Massachusetts Fair Housing Act.

**Massachusetts Law—M.G.L. c. 151B, 804
CMR §§ 1, 2, 3, 8, 10 & 12:**

“Primary Massachusetts civil rights laws prohibit all discrimination in sale or rental of all residential and commercial real property. Virtually all residential land, housing accommodations, commercial space, and all land

intended to be put to commercial use in the Commonwealth are covered by this law”.

The issue with the state FHA as amended in 2012 is that it does not offer equal or greater benefit than the federal FHA so there is no adequate relief for discrimination in forced sales by partition under state law.

The Complaint is not frivolous. Plaintiffs and the Executrix whom the Probate Court wrongly did not permit joinder to the action, did in fact engage in acts in tort as alleged in Appellant’s Answer and Counterclaims. The transcript of the hearings before the Court and the transcript of the September 12, 2016 motion hearing demonstrate that Willinda and Herbert admit they did in fact willingly and knowingly commit waste in tort as alleged by Appellant in her Contesting Answer and Counterclaims (Exhibit 5 to the Complaint found in the MDC in Item # 7, filed 08/10/2016), while Linda was the life tenant and thereafter by permitting the property to be foreclosed upon by the bank absent notifying Appellant of same who offered to pay any and all arrearages on the property. The Massachusetts Supreme Court ruled in *Thayer v. Shorey* (287 Mass. 76; 191 N.E. 435; 1934 Mass.) that waste in tort occurs on the Property when the life tenant does not pay the taxes on the Property and subjects it to seizure. The circumstance that Willinda did not have the money to pay while she was the life tenant is no defense on the record.

“The duty to pay the taxes rested on the life tenant even though the estate was

unproductive. Plympton v. Boston Dispensary, 106 Mass. 544, 547. Spring v. Hollander, 261 Mass. 373, 375-376, 158 N.E. 791. A personal action could have been maintained by the tax collector against the life tenant in possession to recover the amount of the taxes. G.L. (Ter. Ed.) c. 60, § 35. The failure to pay the taxes and suffering the estate to be sold for non-payment manifestly were a substantial injury to the rights of the plaintiffs. They would have been deprived of their estate by an ordinary tax sale unless they redeemed it. The life tenant cannot be permitted to acquire title through such a sale so as to cut off the remainderman. Solis v. Williams, 205 Mass. 350, 354, 91 N.E. 148, and cases cited. When the life tenant fails in this duty to pay taxes, an [***12] action of waste will lie against him. Wade v. Malloy, 16 Hun. 226. *The circumstance that it does not affirmatively appear that the income of the property was sufficient to enable the life tenant to pay the taxes is no defense on this record.* [Emphasis Added]

The record before the court substantiates Willinda illegally converted the residential property into a rooming house and violated Massachusetts Building Codes. (See Plaintiff's Expert Witness Testimony provided by Mr. Mitchell relied upon by the Court). ("Conversion. Conversion consists of a wrongful exercise of dominion or control over the personal property of another. See *Third Natl. Bank*

***of Hampden County v. Continental Ins. Co.*, 388 Mass. 240, 244 (1983). See also *Spooner v. Manchester*, 133 Mass. 270, 274 (1882)".**

The Probate Court Judge lacked judicial discretion to hold the September 12, 2016 hearing and issue the Orders and decisions provided in the Appendix to this case (App. 66-73).

The Massachusetts Supreme Court prohibits any probate court from hearing or award damages alleged as waste in tort as set forth in said Probate Court Orders. (*Heacock v. Heacock*, 402 Mass. 21, 520 N.E.2d 151, 153 (Mass.1988) ("[T]he Probate Court does not have jurisdiction to hear tort actions and award damages."))

Betterment Lien. Respondents Willinda Powell Gray, Herbert A. Barrow, Michelle Maldonado engaged in actions in tort by permitting fraudulent encumbrance of the Property in violation of the Will, the controlling instrument of the sale by permitting the Betterment lien against the property. Respondents Kendall Ayres and the Barnstable County of Health placed the lien on the property without notifying all parties with interest in ownership, aka Respondent, in violation of state policy as set forth in Pet. MDC Complaint.

In *Brunton & Others v. Easthampton Savings Bank*, the Supreme Judicial Court of Massachusetts, 336 Mass. 345, 145 N.E.2d 696 (1957) ruled that liens placed on an estate, *without specification to do so under*

the will permitting same, are invalid. [**Emphasis Added**]

The *Brunton Court* rules neither an attorney or a life tenant has the right to mortgage a property, or consume principal, when a will, as written into the Will of the testator Emma Barrow, only grants Willinda, the life tenant, an equal 1/3 share as remainder heir in common with Herbert and Anita. The Will provides Willinda the rights to renounce her life estate or sell the Property, sell out and out, for the benefit of the remaindermen.

Decedent's will left his property to the life tenant to be used for her support during her life, with the remaining property given to the remaindermen on her death. After her receipt of the property, the life tenant executed a mortgage to the bank and made payments until her death. The remaindermen then brought suit challenging the validity of the bank's mortgage. The trial court found that the mortgage was invalid and the court affirmed. The life tenant took the estate with a power to consume the principal and could sell the real estate and use such portions of the proceeds as might be necessary for her comfort and support; however, the life tenant's power was limited to providing for her support and the decedent's desire to benefit remaindermen was to be protected. As such, even though the life tenant had the power to sell the property, she did not have the power to mortgage it. In the case of a sale, the full value is received in cash and can be held for the life tenant and remaindermen; but, in the case of a mortgage, the remaindermen's interest was subject to

greater risks because the property could be sold on default at a foreclosure sale for a fraction of its value.

OUTCOME: The court affirmed the trial court's judgment in favor of the remaindermen, which declared that the mortgage given to the bank by the life tenant was invalid.

The *Brunton Court* opines that it is one thing to sell and quite another to mortgage. In the case of a sale the full value of the property is received in cash and can be held in appropriate form for the life tenant and remaindermen. But in the case of a mortgage the remaindermen's interest, as represented by the equity of redemption, is subject to greater risks because if the life tenant is in default under the mortgage the property may be sold at a foreclosure sale for a fraction of its value.

Prior to the September 12, 2016 hearing, Appellant notified the Court that she believed Appellees and the Commissioner discriminated against her while the Property was under warrant of the Court for sale by partition.

Massachusetts Law Against Discrimination expressly prohibits discrimination in the sale of housing involving members of protected classes. Appellant alleged Appellees engaged in actions of tort by discriminating against her and the Probate Judge references that Appellant notified the Probate Court of said discrimination and asked for a stay of the hearing prior to the September 12, 2016 motion hearing, 'trial.' (App.

66-73); (Pet. Application for Extension of Writ and App. 5-9).

Neither the Probate Court nor the Massachusetts Supreme Court retained the jurisdiction to hear Appellant's discrimination claims because the Massachusetts Fair Housing Laws revised in March 2012 do not contain equivalent or greater benefits than the Federal Fair Housing claim amended in October 2016 and upheld by the Supreme Court of the United States of America in *Bank of America v. City of Miami, Florida*, No. 15-1111, May 2017 to include forced sales of mortgaged properties.

Article CVI of the Constitution of the Commonwealth of Massachusetts declares all people have certain natural inalienable rights among which may be reckoned the right to possess and protect property. It also guarantees equality under the law (**"Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin."**)

The Supremacy Clause of the United States Constitution to which the Constitution of the Commonwealth of Massachusetts is bound does not permit a state to retain jurisdiction of a state FHA law that does not offer greater or equivalent rights and benefits of the federal FHA.

The record before the Court in the Orders by the Probate Court and testimony by Plaintiffs and their attorney prove the Probate Court Judge and Plaintiffs engaged in and admit to action in tort—activities

strictly prohibited by the FHA amended including, 42 U.S.C. § 3601 et seq, 42 U.S.C. § 3617, and 24 CFR Part 100.600. (App. 66-87).

Sections 42 U.S.C. § 3617, and 24 CFR Part 100.600. Expressly prohibit any party, a judge, Plaintiffs, or the Commissioner from engaging in any action that thwarts or interferes with her rights to seek resolution of claims asserted under the FHA. Further the Orders of the Probate Court and testimony from Plaintiffs in the Transcripts of the Record of the Court and the September 12, 2016 *directly* show Quid Pro Quo Harassment prohibited by 24 CFR Part 100.600—the *Probate Court Judge and Plaintiffs* disparaging Appellant for pursuing her civil rights in the Massachusetts District Court. Indeed, The Probate Court admits in its own Orders that Court did in fact retaliate against her and reduced her monetary award from the sale of the Property because she was ‘disruptive’ in attempting to pursue her civil rights in the MDC.

1. Subsequently thereto, by awarding attorneys’ fees to Plaintiffs, Appellant believes this Court would be engaging in acts prohibited by the FHA and the Constitutions of the United States of America and the Commonwealth of Massachusetts which is its duty to uphold.

2. Subsequently thereto, by awarding attorneys’ fees to Plaintiffs, Appellant believes this Court would be ruling against precedent established by the Appeals Court of the Commonwealth of Massachusetts in *Asker v.*

Asker, 8 Mass. App. Ct. 634 (Plymouth County), June 15, 1979—November 8, 1979.

3. The *Asker* Court ruled a case must be remanded for an evidentiary hearing on disputed issues of material fact during a partition action. The parties are entitled to findings on those issues, under the Massachusetts Rules of Civil Procedure ("Partition proceedings under G. L. c. 241, Section 2, appear to be treated procedurally as equity proceedings in the Probate Courts, see *Clough v. Cromwell*, 254 Mass. 132, 135 (1925); *Young v. Paquette*, 336 Mass. at 674-675, although that point is not clear from the statute. Contrast G. L. c. 241, Section 25. As equity proceedings, partition proceedings would be subject to the Massachusetts Rules of Civil Procedure. See Mass.R.Civ.P. 1, 365 Mass. 730 (1974)) and or G. L. c. 215").

4. The *Asker* Court further rules that issues of whether the actions of the commissioner have been tainted by irregularity must be heard prior to the issuance of any final decree and awarding of damages.

"A decree ordering partition, although denominated "interlocutory" by G. L. c. 241, Section 10, is final by its nature: "once rendered, it is a conclusive determination of the rights of all parties to the proceedings under the petition, and no question any longer remains open concerning either ownership or title, or their individual shares and interest." *Brown v. Bulkley*, 11

Cush. 168, 169 (1853). Although later proceedings culminating in the entry of a final decree are contemplated (see G. L. c. 241, Section 16), the sole questions which arise at the final decree stage are whether the actions of the commissioners have been tainted by irregularity and whether they have divided the locus according to the requirements of the "interlocutory" decree. 11 Cush. at 170. As the "interlocutory" decree is a final adjudication of the rights of the parties in the locus, it follows that they are entitled to a full evidentiary hearing on disputed issues of material fact which have been properly raised by the pleadings and not thereafter waived."

CONCLUSION

Petitioner believes this an urgent case ripe for this Court's examination and intervention to enforce the Constitution of the United States, Supreme Court and federal court rulings, the FHA and Congressional Intent regarding discrimination to any party during the sale of their residential property by realtor during any listing: commercial, private, or forced under warrant of the Court. Appellant has exhausted her remedies in the Appellate Court of the Commonwealth of Massachusetts as it has upheld the Amended Decree by the Probate Court (App. 89-90) and awarded attorney fees to Respondents Willinda Powell Gray and Herbert A.

Barrow, Jr. although the record before it demonstrates actions in violation of the state FHA. (App. 88-90).

Respectfully submitted,

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May 6, 2019

App. 1

**United States Court of Appeals
For the First Circuit**

No. 17-1819

ANITA M. BARROW,
Plaintiff, Appellant,

v.

B. GRANT WILLIS, individually and professional capacity; MARGARET GIFFORD, individually and in her professional capacity as a Broker at Sothby International Realty, Inc.; SOTHEBY INTERNATIONAL REALTY, INC.; HERBERT A. BARROW, JR.; WILLINDA POWELL GRAY; MICHELLE MALDONADO, ESQ., individually and in her capacity as Executrix; GEORGE J. MACKOUL, ESQ., individually and professional capacity; BRIAN MOONEY, individually and in his professional capacity at Mooney Planning Collaborative, LLC and SDSB Investment Group, LLC; MOONEY PLANNING COLLABORATIVE, LLC; MICHAEL C. HARLOW, individually and in his professional capacity at SDSB Investment Group, LLC; SDSB INVESTMENT GROUP, LLC; MUTUAL BANK; BRUCE DUPHILLY, individually and in his professional capacity at Mutual Bank; JOHN AND JANE DOE; JENNIFER S.D. ROBERTS, and/or her agents and/or assigns individually and/or professional capacity as an attorney and Court appointed Commissioner; DOUGLAS AZARIAN, individually and professional capacity as a Broker at Kinlin Grover Real Estate; FALMOUTH REALTY INVESTMENTS, LLC; DAVID H. BENTON, individually and in his professional capacity at Falmouth