No. 18-390

# In The
# Supreme Court of the United States

SANDRA PLETOS and MITCHELL PLETOS,

*Petitioners,*

v.

MAKOWER ABATTE GUERRA WEGNER VOLLMER, PLLC, JOHN FINKLEMAN, ROGER PAPA, GIOVAN AGAZZI, DANNY LANDA, KATIA AZIZ, and MIKE DESJARDINES,

*Respondents.*

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

## BRIEF IN OPPOSITION TO CERTIORARI FOR RESPONDENTS PAPA, AGAZZI, LANDA, AZIZ, AND DESJARDINES

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## QUESTION PRESENTED

Did the United States Sixth Circuit Court of Appeals properly affirm the dismissal with prejudice of Petitioners' federal claims?

## RULE 29.6 STATEMENT

None of Respondents, Papa, Agazzi, Landa, Aziz, and Desjardine ("Respondents") are a nongovernmental corporation. None of Respondents have a parent corporation or shares held by a publicly traded company.

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## STATEMENT OF THE CASE

This is the latest chapter in Petitioners, Sandra Pletos's and Mitchell Pletos's ("Petitioners") sad, unyielding, and desperate attempt to avoid their paying homeowners' association fees to the Lake In the Woods Association ("LWA"). This matter began on November 8, 2012, when Petitioners, who are lot owners in the Lake In the Woods subdivision in Shelby Township, Michigan filed a 15-count complaint against the LWA in the Macomb County Circuit Court. In that complaint, Petitioners alleged, among other things, that the LWA violated the association's Bylaws, the association's Articles of Incorporation, the association's Declaration of Easements, Covenants, Conditions, and Restrictions, the Michigan Nonprofit Corporation Act, and the Fair Debt Collection Practices Act ("FDCPA"). In response, the LWA filed a countercomplaint to collect Petitioners' unpaid assessments, which dated all the way back to 2006.

The Macomb County Circuit Court granted summary disposition to the LWA on Petitioners' complaint. The court determined, among other things, that Petitioners failed to establish that the LWA violated the association documents or the Michigan Nonprofit Corporation Act, and that the LWA was not a "debt collector" within the meaning of the FDCPA. The court granted partial summary disposition to the LWA on the LWA's countercomplaint regarding Petitioners' liability for unpaid dues, interest, late charges, costs, and attorney fees, with the specific amounts due and owing to be determined later at an evidentiary

hearing. After the evidentiary hearing was held, the court entered a judgment that ordered Petitioners to pay the LWA $20,552.64. The trial court denied Petitioners' motion for reconsideration. Petitioners appealed and a stay was granted after Petitioners posted a bond. The Michigan Court of Appeals affirmed the judgment, and the Michigan Supreme Court then denied Petitioners' application for leave to appeal. Despite losing in every Michigan court, Petitioners refused to pay the judgment, so the LWA moved for judgment against CNA Surety on the appeal bond. The trial court granted the LWA's motion, and entered judgment in the amount of $24,798.03.[1]

Unhappy with the outcomes in the Michigan state courts, Petitioners turned to the federal courts to prolong the absurd. On September 2, 2016, they filed a complaint against the Respondents in the United States District Court for the Eastern District of Michigan, which was followed by the filing of a 177-paragraph amended complaint on November 17, 2016. In the amended complaint, Petitioners alleged that Respondents violated the Fair Debt Collection Practices Act ("FDCPA") and the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Petitioners also plead various state law claims.

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[1] Contrary to Petitioners' allegations that a judgment no longer exists against them, there is, in fact, still an outstanding judgment arising from the state court claims and counterclaims mentioned above. Respondents have merely delayed efforts to collect on the judgment unwarranted due to this litigation.

With the federal action, Petitioners attempted to disguise their claims as separate and distinct from the allegations made in the state court lawsuit. The United States District Court, however, clearly saw their claims for what they really were: an attempt to re-litigate issues and arguments that they already lost in the state courts. Citing to *Exxon Mobil Corp. v. Saudi Basics Indus. Corp*., 544 U.S. 280 (2005) and *McCormick v. Braverman*, 451 F.3d 382 (6th Cir. 2004), the United States District Court correctly analyzed this case:

> While the majority of Plaintiffs' claims appear to be barred by the doctrine of res judicata, it is not clear that all of the claims could have been raised during the state court litigation. However, collateral estoppel bars Plaintiffs' FDCPA claim against the LWA Defendants because the state courts have already concluded that the LWA is not a debt collector under the FDCPA.
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> As such, Plaintiffs are collaterally estopped from arguing that the LWA is a debt collector subject to the FDCPA. Plaintiffs' FDCPA claim against the LWA is also subject to dismissal. Moreover, as previously discussed in section III.D., *supra*, Plaintiffs have failed to allege a RICO claim against any of the Defendants in the instant proceedings. Thus, even if res judicata does not preclude Plaintiffs' claims against the LWA Defendants, their claims are nonetheless subject to

> dismissal pursuant to collateral estoppel and/or for failure to state a claim.

(U.S. District Court, p. 22-23.)

Petitioners subsequently appealed the district court's judgment to the Sixth Circuit Court of Appeals. On August 30, 2017, the Sixth Circuit affirmed the judgment of the district court in full.

The Sixth Circuit instantly recognized that Petitioners' claim "is nothing more than an attempt to avoid paying the homeowners association fees that the state court already determined they must – this time for a longer period of delinquency, as well as on a prospective basis." (U.S. Court of Appeals, p. 8.) The Sixth Circuit properly dealt with Petitioners' tactics: "Thus, with slight nuances, the Pletoses effectively seek to appeal the state court order finding that homeowners association fees were properly assessed. Under *Rooker-Feldman*, the District Court properly found that it lacked jurisdiction to review that decision. As do we." (U.S. Court of Appeals, p. 8.) After analyzing all the issues, the Sixth Circuit issued a comprehensive ruling:

> The district court correctly found that *Rooker-Feldman* applied to the entirety of the Pletoses' claims. While purportedly brought under partially different statutes, against arguably different parties, in a different forum, the gravamen of the Pletoses' claims is the same: an attempt to avoid paying homeowners association fees. The state court already determined that they must, and we cannot and do not revisit that ruling.

> Though the claims are barred by *Rooker-Feldman*, the district court provided additional reasoning as to why each claim fails – including failure to state a claim, the statute of limitations, *res judicata*, and collateral estoppel. Even were we to find jurisdiction, we would adopt the reasoning of the district court and its conclusions and deny the Pletoses' appeal. We AFFIRM.

(U.S. Court of Appeals, p. 10-11.)

Petitioners now petition this Court to review the decisions of the lower courts under the guise of seeking clarity regarding the interplay between the *Rooker-Feldman* doctrine and the FDCPA and RICO statutes. However, Petitioners' petition demonstrates that what they are really seeking here is an untimely review of the Michigan Courts, as evinced by the following passages from their introduction and statement of fact sections of their petition:

> This Court should reverse, so that the claims for an Accounting and Injunctive Relief can serve to accomplish its main purposes: 1) To comply with contractual rights for corporate reviews; 2) To determine who had legal authority to act on behalf of LWA; 3) To obtain verification of debt; 4) To aid in determining if the FDCPA, RICO, and Fraud cases should proceed; 5) To prevent fraud.
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> Thus the gravamen of Pletoses entire federal action centers upon this one key issue. . . . the

> Respondents repeatedly used mail and wire services to fraudulently hold themselves out as directors and officers of LWA between 2012 and 2016 (and 2017, as stated in a Motion to Supplement that was later filed but denied), when, undisputedly, the Respondents were not directors or officers. As stated above, the lower courts omitted the majority of the factual allegations made in the complaint from their opinions and review, denying Pletoses due process. It is pertinent that this Court review the lower court record when reviewing this petition.

In short, Petitioners are, once again, trying to relitigate their duty to pay homeowners association fees and the authority of the LWA and its attorneys to collect the fees.



## ARGUMENT

The petition for writ of certiorari should be denied for various reasons. First, the *Rooker-Feldman* doctrine operates to bar review of Petitioners' claims by the lower federal courts, and it does so without undermining the provisions of the FDCPA or the Racketeer Influenced and Corrupt Organizations Act. Second, even if the *Rooker-Feldman* doctrine did not operate to bar Plaintiffs' claims, the claims would still fail as a matter of law under the alternative grounds that were delineated in the lower federal courts' opinions. Further, the claims raised do not involve issues of significant jurisprudence.

## I. The *Rooker-Feldman* doctrine bars Petitioners' claims against the Respondents.

The *Rooker-Feldman* doctrine stands for the proposition that lower federal courts are barred from conducting appellate review of final state court judgments because only the United States Supreme Court is vested with jurisdiction to review such claims. *Exxon Mobil Corp.*, 544 U.S. at 292. In *McCormick*, 451 F.3d at 394, the Sixth Circuit held that a plaintiff could theoretically file a federal court lawsuit asking the federal court to deny a legal conclusion reached by a state court without invoking the *Rooker-Feldman* doctrine, but "if a third party's actions are the product of a state court judgment, then a plaintiff's challenge to those actions are in fact a challenge to the judgment itself.

Petitioners assert that the *Rooker-Feldman* doctrine does not bar their FDCPA and RICO claims in this lawsuit because the claims are based not on a state court judgment itself, but rather on the collection methods employed by Respondents in attempting to collect on a state court judgment. However, Petitioners' claims are based on the Respondents' underlying authority to assess and collect Petitioners' homeowners association fees, which matters the state courts have already ruled on. As such, Petitioners' claims are the product of a state court judgment.

## II. Even if the *Rooker-Feldman* doctrine did not completely apply, Petitioners' claims are still barred by collateral estoppel, res judicata, and failure to state a claim.

The lower federal courts, likely foreseeing this very petition by Petitioners, took the additional step of analyzing Petitioners' claims separate from the *Rooker-Feldman* doctrine to show that, even if the *Rooker-Feldman* doctrine did not bar Petitioners' FDCPA and RICO claims, the claims would nonetheless fail on various alternative legal grounds. In regards to Petitioners' FDCPA claims against the LWA Respondents, the district court determined that most of the claims were barred by res judicata while any remaining claims were barred by collateral estoppel. (U.S. District Court, p. 22-23.)

As for Petitioners' RICO claim, the district court determined that Petitioners failed to plead a viable RICO claim again Respondents. (U.S. District Court, p. 21.) The foundation of Petitioners' RICO claim is the alleged FDCPA violations by Respondents. However, the district court determined that Petitioners' FDCPA claims failed for the reasons stated above, and it cited to *Kevelighan v. Trott & Trott, PC*, 771 F. Supp. 2d 763, 777 (E.D. Mich. 2010) for the proposition that even a successful FDCPA cannot form the basis for a RICO claim. (U.S. District Court, p. 21.)

The Sixth Circuit affirmed the district court's holding in full. (U.S. Court of Appeals, pp. 10-11.) In their petition, Petitioners do not even address these

alternative holdings of the lower courts that are separate and distinct from the *Rooker-Feldman* doctrine, let alone demonstrate why the lower courts' alternative findings are incorrect. Instead, Petitioners merely regurgitate the tired argument that they have been making since the inception of their state court lawsuit, namely that the LWA and its attorneys do not have the authority to assess and collect homeowners association fees from Petitioners. Again, the state courts have already determined that Respondents do, in fact, have such authority.

## CONCLUSION

For all the reasons articulated by every court that has already rejected Petitioners' ridiculous claims, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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