No. 18 - 775

In the

SUPREME COURT OF THE UNITED STATES

In Re Chien

&

Andrew Chien

Petitioner,

v.

Commonwealth of VA, Mark R Herring, Chesterfield County, Karl S. Leonard, Frederick G. Rockwell III, Judy L Worthington, Mary E Craze, Wendy S Hughes, Donald W Lemons, Glen A Huff, W. Allan Sharrett, Dennis S Proffitt

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit No. 18-6346 & 18-1523

PETITIONER'S SUPPLEMENTAL BRIEF (I)

Andrew Chien
665 Ellsworth Avenue
New Haven, CT06511
(203)562-8899
Jcs23@yahoo.com

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I. This Court has Original Jurisdiction

Pursuant to Rule 15.8, Petitioner Andrew Chien ("Chien") submits the Supplemental Brief (I) based on the Report and Recommendation ("the Report"), App. 64a-89a, dated 1/7/2019, the District Court for the Eastern District of Virginia ("VA"), Division of Richmond, under Case 3:18CV106(MHL), Chien v. Diana Gribbon Motz et. al. Details will be later.

Especially, Chien claims that this Court has original jurisdiction from

> "28USC §1251(b)(3) All actions or proceedings by a State against the citizens of another State."

Because Chien, a Connecticut ("CT") resident was incarcerated in VA for 1148 days (nearly 38 months) without conviction. This Court can allow Chien to submit Brief on Merit, or grant Writ of Certiorari, with which no Respondents filed objections.

II. Imprisoning for Consumer Debt Collection

As mentioned in p.6-10, Certiorari, VA Debt Collection significantly violated Fair Debt Collection Practice Act ("FDCPA"), codified as "15USC§1692 – 1692p". William K Grogan ("Grogan"), an agency titled of "Commissioner in Chancery", under conspiracy with Andrew K Clark ("Clark") of LeClairRyan for ghost-writing his orders, unauthorized to incarcerate Chien, which was opposed by Judge Frederick G. Rockwell III ("Rockwell") of VA Chesterfield County Circuit Court, but illegally executed by Respondents/ Sheriffs, Karl S. Leonard ("Leonard"), and Dennis S Proffitt ("Proffitt"), which construed to be a Fourth Amendment claim under "42USC §1983" for unreasonable seizure.

Here, attached some original documents: App. 96a-103a, Grogan's Order, entitled "Order Concerning Incarceration of Defendant / Judgment Debtor, Andrew Chien for Civil Contempt", dated 5/7/2014, which was signed by Grogan, under conspiracy with Respondent Mary E Craze in personating him as a judge, p.14, *id.* During 38-month detaining, Judge Rockwell III made, for more than six times, opinions /orders, either verbal or writing to oppose VA Debt Collection because of no jurisdiction. App. 90a-95a are copies of his letters dated 6/12/2014, 4/25/2014, 8/21/2015 and 11/23/2015 respectively. Such judicial corruption, VA Code §18.2-441, for Grogan, a private lawyer, to usurp the authority of a judge, for his personal income, (second paragraph, App. 97a) should be discovered and attacked.

Petitioner is "consumer" because the governing statute defines "consumer" as "any natural person obligated or allegedly obligated to pay any debt." 15USC §1692a(3).

Although Grogan is an agent, but he isn't an employee of the VA State, (see. p.9 *id*). He is not exempted as a debt collector by 15USC §1692a(6)(C). In Case Pollice v. National Tax Funding, LP, 225 F. 3d 379, 406, Court of Appeals, 3rd Circuit 2000:

. "Section 1692a(6)(C) provides:

> The term ["debt collector"] does not include—
> . . . (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties.
> .... The exemption expressly is limited to "any officer or employee of the United States or any State."... ***The exemption does not extend to***

those who are merely in a contractual relationship with the government. See Brannan v. United Student Aid Funds, Inc., 94 F.3d 1260, 1263 (9th Cir. 1996)"(emphases added) Therefore, VA Commissioner in Chancery is debt collector, not Chancery Court (p.8 *id*). LeClairRyan is also a debt collector because he is a professional law firm with salary employees of lawyers. His employee Clark, ghosted-wrote almost all orders of Grogan's. Clark and other employees of LeClairRyan initiated four lawsuits for debt collection in VA or CT, against Chien or Chien's associate alone. LeClairRyan in the headquarter, held several times for debt collection hearings under Chien's handcuffing and shackling. (ref. No. 18-598 of this Court). In case Heintz v Jenkins, 514 U.S. 291, 293 (1995), this Court affirmed the term "debt collector' in FDCPA, "applies to a lawyer who 'regularly,' through litigation, tries to collect consumer debts."

When Case 1:13CV0993 filed, Chien was in personal bankruptcy, in the District Court for CT, attorney James Byrne etc., on behalf of Richard J Freer("Freer") filed appearance in Chien's bankruptcy to submit the authority of debt collection, but Mr. Clark still with Grogan, incarcerated Chien in VA, for debt collection, by violated "15USC§1692e", which prohibits "false, deceptive or misleading" collection, as well as 15USC§1692d(1) which prohibits to use criminal punishment to collect debt.

Even before FDCPA effective, VA has its tradition to prohibit collect debt at criminal procedure except the debtor has conviction. In Case Mullins v. Sanders 189 Va. 624, 625 (1949) VA Supreme Court held:

"5. The fact that a creditor has procured a

criminal warrant against his debtor for the ulterior purpose of enforcing the collection of the debt will not of itself support an action for abuse of process, for in addition to incurring civil liability the debtor may have violated the criminal law so as to justify his arrest and prosecution. So long as the creditor merely aids in the prosecution of the criminal proceeding in the regular manner, by procuring the warrant in a proper way and appearing as a witness for the prosecution in the criminal proceeding, he is not liable in an action for abuse of process, although the criminal prosecution may result in the payment of the debt. ***But where the creditor uses the criminal process as a means of oppression, beyond the mere fact of arrest and prosecution of the charge, to compel the debtor to make settlement, the action will lie***".(emphases add)

III. Civil Right Violation

Respondents/Sheriffs Leonard, and Proffitt were not debt collectors as defined by FDCPA, but they committed false imprisonment under common tort theory, because they incarcerated Chien so long time without probably cause. "Civil contempt" or "default in debt" isn't the cause for arrest/incarceration. In VA criminal system, there is no offense code for civil contempt. VA hasn't allocated any of tax-payer money to incarcerate someone for civil contempt. As mentioned in p.13, *id,* for funding to detain Chien for nearly 38 months, Respondents/Clerks Judy L Worthington, Mary E Craze, Wendy S Hughes respectively mis-used Offense Code "CON3210S9", which is court contempt by a judge (here is Judge Rockwell) under punishment of VA Code "§18.2-456"

and "§18.2-457" with maximum penalty of $250 or ten days in jail if without jury impaneled. This fraud caused the County Administrator of Chesterfield County violated VA Code "§18.2-112.1.B" to wrongly appropriate criminal fund to pay incarceration for civil case for 38 times. The mess records of Chien's imprisonment, made by Clerks and Sheriffs, caused Chien a "secret inmate", p.15, *id,* escaped monitoring or supervision by VA Department of Correction or FBI.

As mentioned in p.11, *id,* VA Code "§8.01-612" has clear language that Commissioner in Chancery doesn't have authority to issue arrest warrant. In case, "Early Used Cars Inc. vs. J Thomas Province", 239 S.E.2d 98 (1977), VA Supreme Court on Nov. 23, 1977, favored Appellant to push Commissioner in Chancery to issue a Writ of Mandamus in debt interrogatories, but every step must be under approval of the local State Court. Here, Grogan in conspiracy with Proffitt and Leonard. illegally interfered the authority of Judge Rockwell.

In Case Manuel v. City of Joliet, Ill., 137 S. Ct. 911 (2017), this Court affirmed that

> "The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause."

In denial of Chien's claim under the Fourth Amendment, the District Court abused the two-years-time bar (p.28-29 *id*), affirmed by Fourth Circuit under 18-1523, which is wrong, because Chien was released from the jail on 6/27/2016, and filed the Case 1:17CV0677 on 6/12/2017 within 12 months, VA Code "§ 8.01-229.A.3" gave time toll of victim for the period

of incarceration. Here, based on the time-toll for 1148 days, there is no time bar for Chien's allegations for intentional tort of false imprisonment to any Respondents based on personal injury within two years, VA Code "§ 8.01-243.A".

IV. Qualified Immunity Not Applied

Sheriff Proffitt, Leonard and others claimed qualified immunity for false imprisonment allegation, which is not applied here. There are multi precedents in the District Court for Easter District of VA, Richmond Division, to deny defense under qualified immunity by Sheriff or employees of VA government.

(a) As mentioned in p.25, *id,* under Alfaro-Garcia v Henrico County, Sheriff Wade, Case 3:15CV349 -MHL, Sheriff Wade was judged, on September 26, 2016, to commit intentional tort for illegally incarceration of Alfaro-Garcia for extra half a day to overcome the qualified immunity defense.

(b) In Daly v Commonwealth et al, 3:14CV250-HEH, on July 17, 2014, agents of the VA Department of Alcoholic Beverage Control, were judged to commit malicious prosecution, and false arrest, etc., under 42 USC§1983, despite of defense with the qualified immunity.

In case Lozman v. City of Riviera Beach, Fla., 138 S. Ct. 1945 (2018), this Court held that the plaintiff did not have to prove the absence of probable cause to sue a city for retaliatory arrest under the First Amendment.

In this case, there is similar event mentioned in p.15, *id,* Respondent "Proffitt arrest Chien on 5/8/2013 by an order dated 3/19/2013, then solitary

confined Chien for 72 hours, and to use physical tortious to prevent Chien from writing a motion to object Freer and Clark to steal about $35,000 from CBI; and kept incarceration order dated 5/10/2013 secret, and never served Chien a copy, and set aside Chien's request for an attorney".

It stands that Chien alleged Proffitt aided Freer and LeClairRyan for retaliation by solitary confinement.

V. "§8.01-508" Contains Improperly Words

For indefinitely incarcerating Chien, Grogan held his legal reason (third paragraph, App.96), which agreed by Respondent Leonard, as

> "Consequently and pursuant to Virginia Code § 8.01-508, I held Chien in civil contempt."

VA Code § 8.01-508 contains improper words:

> ".....If the person in default fails to answer or convey and deliver he may be incarcerated until he makes such answers or conveyance and delivery."

The improper words of VA Code § 8.01-508, conflicted with several VA Codes, such as "VA Code "§19.2-129" which didn't allow Grogan to issue any contempt order, because to "punish for contempt" is sentence. Both VA Code '§16.1-69.24. Contempt of court', and '§18.2-458. Power of judge of district court to punish for contempt", state clearly it is judge, no anyone else, to issue order of 'Court Contempt'" (p26, *id.*).

In Case 1:17CV677("LO"), Chien filed "MOTION for Add of Issue to Correct Error of VA Code §8.01-508" from Interlocutory Injunction at Three Judge

Panel from '28USC §2284", Doc.#123, dated 2/23/2018, and Chien also served a copy to Attorney General of VA following Rule 5.1(a)(1)(B), Fed R. Civ. Pro. But, the District Court just set aside of this important issue, not mentioned it in the order (App. 11a-27a), the Fourth Circuit didn't correct that error.

VI. Why 11/6/2013's Order Void

As mentioned on p.21, *id*, under Chien's personal bankruptcy in CT, the District Court of VA on 11/6/2013, by not issuing summons to Grogan, and LeClairRyan etc., directly denied both Habeas Corpus and Chien's complain under following reasons:

> "William K. Grogan is not a state actor and thus not amenable to suit under § 1983. As such, defendant William K. Grogan will be dismissed. As defendants LeClair Ryan and William K. Grogan & Associates are firms and not "persons" for purposes of § 1983 liability, the firms cannot be sued pursuant to 1983 and must be dismissed." Appendix L. 54a"

But if Judge O'Grady had followed FDCPA, he would have ruled that the three defendants were debt collectors; they committed subject error, plus using illegal criminal means, then he would have released Chien immediately with $5 application fee under 28USC§2254(b)(1)(B)(i) or (ii)". But he didn't.

The retrospective relief by announcing the void of both the Fourth Circuit's order under 18-6346, and District Order 11/6/2013, is important now, with immediately effect for Chien's unresolved current claim under false imprisonment and FDCPA, because

(a) after Chien got freedom on 6/27/2016, Chien filed suits in the District Courts for both CT and VA, and failed for all cases without any judge to give Chien a fair and impartial trial, because of abused collateral estoppel of the 11/6/2013's order in both VA and CT, p.22, 23,24, *id.* To reopen Case of 1:13CV993, will help to discover truth in any case in either VA or CA, in which the results of 1:13CV993 were abused by Doctrine of Res judicata or *Rooker-Feldman.*

(b) Violation of FDCPA happened in VA, and must be claimed within one year. Although LeClairRyan didn't be served summons, but it voluntarily filed Reply Brief in Appealed case Recording No. 13- 8017 on 01/21/2014 by Joseph M. Rainbury of LeClairRyan. There will be time-toll for claim against LeClairRyan in reopening the case of 1:13CV993.

(c) Other errors of Case 1:13CV993 included: to wrongly classify Chien as an inmate under "28USC §1915", and committed subject error to hold VA Court having jurisdiction under Chien's bankruptcy in CT, and committed administrative error or non-judicial act by on behalf three defendants, denied Chien's claim for Fourth Amendment.

VII. Missed Properties and Venue Selection

(a) As mentioned in p.7,9,10,19,23, 27 *id,* the only results of incarcerated Chien in VA for 38 months, were Freer. Grogan and LeClairRyan to wrongly occupied assets of third parties, under Chien's custody, and Chien's professional belongings without a list, and without giving Chien a penny, except in conspiracy with Respondent Judy L Worthington, p.10, *id,* to forge a stock certificate for Freer to replace Chien. Then, Freer stole the cash of CHBM paying

Grogan and LeCairRyan to satisfy the order (second paragraph, App. 97a). The stock certificate was pledged in LeClairRyan. This action is grand larceny, objected by shareholders of CHBM. These action violated "15USC 1692f(6)"(p.7 *id*), as well as "§ VA Codes 18.2-213.2" & "§ 18.2-137.B.(ii)"to identify guilty in garnishment (p.26, *id*).

CHBM is a public company, and its financial statement must book by the Generally Accepted Accounting Principles ("GAAP"), then audited by an accountant who must be a member of Public Company Accounting Oversight Board ("PCAOB"), accept monitoring for his/her auditing. These rules kept Freer never filed a financial statement for CHBM since he stole cash in November of 2014, which made Freer not qualified as controller of CHBM. But LeClairRyan together with Freer, rejected to return the stock certificate to Chien, also so far Chien can't get a judgement to correct Grogan's error in this issue. Under no fully control of CHBM, Chien can't hire a new Stock Transfer Agency. Then CHBM shares lost qualification for public trading. On September 21, 2018. the trading symbol of CHBM was revoked, which created Chien's financial fiduciary liability and significant reputation damage because Chien caused the financial loss of all 40 shareholders, ref. Petition for Rehearing, No. 18-598.

(b) Both Case 1:13CV993 and 1:17CV667 were filed in the wrong division of the District Court for Eastern District of VA, which has four divisions. Due to Local Rule 3(B)(4), the Richmond Division encompasses Richmond City and Chesterfield County, where all Respondents located. Due to incarceration and

without attorney, Chien wrongly filed in Alexandria Division for the case 1:13CV993 in 2013, then inherited. In Case 1:17CV677, Respondent Leonard raised the issue of wrong venue on 7/17/2017, Doc.#20, but no correction. Now it is time to correct the venue when the case will reopen.

VIII What's the Report (App. 64a-89a) Covered

After Chien suffered wrong judgment under Case in 1:17CV385, Chien v Grogan et al, Chien filed Appeal to Fourth Circuit under Recording No. 17-1944, which was negatively treated by not addressing any merit of Chien's standing. Chien felt that Judges acted in excess of Judges' official capacity with fraud of omission of protecting the civil right of US Citizen as specified in Sec. 309 (b) of Federal Courts Improvement Act of 1996, Pub. L. 104-317, Oct. 19, 1996, 110 Stat. 3847, then filed the case 3:18CV106 (MHL), for declaration relief. But the Report held that Chien's request would cause "appellate review would become an exercise in futility." (App.81a).

It is true that there is no special court system to resolve the citizens' complaint regarding the omission of civil rights by Federal Judges. However, the Report showed an active effort in answering major of Chien's disputed merits, which deserved here under a fair trial for discovery and further discussion, but were intentionally omitted or generally denied by Judge O'Grady and the Fourth Circuit under untruth excuses such as two-years' time bar and others. These important issues are:

(a) Whether the defamation lawsuit of CL12-485 is retaliation against Chien's whistle-blower of Freer's embezzlements in CBI's Chapter 11, App. 66a.

(b) Whether VA Debt Collection had venue error after "Freer moved to domesticate the Virginia judgment in Connecticut, where Plaintiff lived and owned property at Freer v. Chien (Freer II), No. NNH-CV12-4053717-S (Conn. Super. Ct.)," App.66a.

(c) "Grogan could not order the transfer of a controlling share of Plaintiff s company, China Bull Management Inc" ("CHBM" or "CBM"), "because CBM's shareholders voted on July 10, 2016 to reject Freer's takeover of the company..... In addition, Plaintiff argues that ***CBM is registered in Nevada, rendering the company outside the personal jurisdiction of Virginia's courts*** and ***voiding*** any ***order*** transferring the company's assets". App. 70a.

(d) "Plaintiff argues that the Chesterfield County Circuit Court never endorsed Grogan's detention order.... Instead, Plaintiff accuses Grogan and "Clerk Craze" of impersonating Judge Rockwell to fraudulently order Plaintiffs detention... According to Plaintiff, ***Judge Rockwell in fact determined that Grogan lacked the authority to order Plaintiffs confinement***. App. 70a-71a, (emphases added).

(e) "Plaintiff argues that his 2013 bankruptcy proceedings in the Bankruptcy Court for the District of Connecticut required Grogan to stay the Virginia debt collection proceedings." App.71a.

(f) "pursuant to 28 U.S.C. § 2284, Plaintiff,..., seeks a three-judge district court to challenge the constitutionality of a statute, Va. Code § 8.01-508, relating to the detention of debtor". App. 82a.

(g) "Plaintiff did not serve time as an 'inmate' under 28 U.S.C. § 1915", App. 83a:

(h) Various issues under FDCPA, App. 86a-88a. (some views need changes)

CONCLUSION

The petition for a writ of certiorari should be granted for remand of this case back for further processing.

Respectfully-submitted

Petitioner: Andrew Chien

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