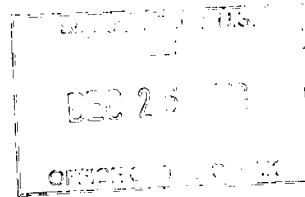


Iris McClain,  
Petitioner/Appellant

V



Wells Fargo Entities (Wells Fargo)  
&  
Bank of New York Mellon (BONY Mellon)  
Respondent/Appellee

Appeal No. 18-1388

**ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF THE UNITED STATES**

PETITION FOR WRIT OF CERTIORARI  
(Corrected)

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March 3<sup>rd</sup> 2019

Questions Presented for Review

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2. Whether or not the Dismissal is Tainted by Fraud.....12

Parties

Petitioner: Iris McClain

Respondents: Wells Fargo Entities (Wells Fargo), et. al  
Bank of New York Mellon (BONY Mellon)

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### Jurisdictional Statement

Jurisdiction is proper based on Notice of Judgment filed October 4, 2018, doc 25-2, notifying me “Petition of Writ of Certiorari”: to be timely filed, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court’s entry of judgment.”

### Constitutional Reference

The 14<sup>th</sup> Amendment: “No State shall make or enforce any law which shall abridge the privileges... of citizens...deprive any person of life, liberty or property without due process of law, nor deny to any person...the equal protection of the law’s due process.” (pages 7 & 10)

### Statement of the Case

- (1) It is my belief my 14<sup>th</sup> amendment right, to due process and being fairly heard, have been violated, for no other reason than I am self-represented. Judge Chuang accomplished this by unfairly targeting the negatives of the case and me, 11 misstatements, suppressing evidence a desired outcome rather than following where the evidence was leading him. eventually resorting to fraud upon the court in connection with his handling of Order 117.
- (2) The complaint, filed February 14, 2017, outlines how Wells Fargo improperly changed the terms of the interest rate from adjustable to fixed, during a loan modification agreement (LMA), without my consent and concealed. The case was dismissed as untimely filed. His Opinion reflects that I knew when I signed the agreement.
- (3) From 2008-2014, Wells Fargo maintained I agreed to the change of the interest rate *term* before admitting the truth February 18, 2014, in a letter stating, "Our records reflect the monthly...payment...is accurately being billed, in accordance with the Adjustable Rate Note." (J.R. 78 Opinion p 5 Appx B). An entry on the October 25, 2016 proof of claim attachment in the amount of \$201.64, led me to believe the LMA was a fraud from the beginning. (am compl par 58, 59, 62, 71, 81, 83) (copy of the check, Appx A)
- (4) July 3, 2017: The Respondents, did not deny the allegations, but moved to have the case dismissed and asked the court to "take judicial notice of the bankruptcy cases and exhibits therefrom attached..." (Omnibus Memorandum In Support of Motion to Dismiss Amended Complaint..." dated July 3, 2017 page 5). Attachments include: The "Adjustable Rate Note" (ARM J.R.2 Appx A), "Amended Objection To Third Amended Proof of Claim, (Objection 95-J.R. 40-42, Appx D) and "Consent Order Resolving Objection to Proof of Claim, (Order 117) (J.R. 65-67, Appx E).

- (5) I provided the Court with the Loan Modification Transmittal Form (LMTF) also submitted in the 2009 bankruptcy (95-2, J.R.80 Appx A), because it is the phone agreement reduced to writing; however, there is no evidence it was considered.
- (6) Exhibits 68-1 to 68-9, which were referenced, to show diligence on my part, appears to have been ignored. (AFF F)
- (7) March 8, 2018: Judge Chuang dismissed the case as outside of the statute of limitations and issued his Opinion, doc 83 and Order, doc 84. I appealed his Order.
- (8) The Respondents' attorneys promoted the consent order, Order 117, as res judicata, inclusion etc. However, Judge Chuang mentioned it in passing; therefore, on appeal, wrote "That makes me suspicious that there is a hidden element here; however, does it mean fraud is being committed? Perhaps, but I can't prove it." (brief, May 2, 2018 pages 19 & 20)"
- (9) October 4, 2018, The Appeal Court Affirmed the dismissal stating:
- (10) "In accordance with the decision of this court, the judgment of the district court is affirmed." (appeal 18-1388, doc 25-1 p 2 of 2 filed 10/04/2018)
- (11) Notice of Judgment: "Judgment was entered on this date in accordance with Fed. R. App. P. 36. ... To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment". (appeal 18-1388, doc 25-2 page 1 of 3 filed 10/04/2018)
- (12) Unpublished Opinion:
- "We have reviewed the record and perceive no reversible error... We affirm for the reasons stated by the district court...AFFIRMED". Footnote: "We find no merit to McClain's contentions on appeal that the district court was biased against her..." (Doc 24 page 3). I respectfully disagree.
- (13) October 26, 2018: Mandate was issued.



- (14) Weeks after filing the 2017 case appeal brief, I learned Judge Chuang also dismissed the bankruptcy appeal brief. It is easier to pinpoint the statute of limitations in that instance because it's based on a 14-day timeframe; however, in that instance, Judge Chuang made misstatements of material matters and misrepresented a key piece of evidence that restarted the statute of limitations. That Order was the October 31, 2017 "Order Vacating Order Denying Motion to Have Proof of Claim #2 Disallowed/Expunged" (bankruptcy 2016 doc 79). This provided me information to support Judge Chuang's unfair pattern of not weighing relevant evidence, fraud upon the court and an unconstitutional dismissal.
- (15) It is my belief that if the appeal court was aware of the questionable events, they may not have considered his actions fair and/or Affirmed the dismissal.
- (16) December 26, 2018: I filed the Appellant's brief to the Supreme Court.
- (17) Following are the 4 areas reflected in Judge Chuang's Opinion that show I was deprived of my constitutional right to be heard and compelling reasons the petition should be Granted:
- i. An assessment based on the Federal Rules of Civil Procedure without considering when all 5 elements aligned, presented a no-win situation.
  - ii. The Court's suppressing the truth of the evidence (Doc 117) hindered the court's ability to "perform...its impartial tasks of adjudging cases...".
  - iii. In the place of justice, there is judicial misconduct.
  - iv. Orders based on the filing status: self-represented.

### Reasons For Granting The Petition-Due Process

(18) I, Iris McClain, humbly petition this Honorable Court for a Writ of Certiorari to ask for a review of the District Court's March 3, 2018 Order dismissing the complaint and the October 4, 2018 Judgement of the United States Appeal Court Affirming.

(19) "No State shall make or enforce any law which shall abridge the privileges... of citizens...deprive any person of life, liberty or property without due process of law, nor deny to any person...the equal protection of the law's due process." (14<sup>th</sup> Amendment) Judge Chuang's Opinion reflects an unconstitutional conflict between personal prejudices, laws, and rules.

(20) Like the widow, "...who kept going to him and saying, see that I get Justice from my legal opponent!...for a while he was unwilling, but afterward he said to himself, 'Although I do not fear God or respect any man, because this widow keeps making me trouble, I will see that she gets justice so that she will not keep coming and wearing me out with her demand.'"

(NWTHS) She believed in her legal matter, I believe in mine.

(21) The First Issue: "Whether or not Judge Chuang is Fair"

(22) Partiality concerns everyone. The Supreme Court stated, "everyone has the constitutional right to proceed without counsel", "*Faretta v. California*", (1975); I'm asking to be heard, absent the "separate but equal" mentality, on behalf of myself and all who would be silenced for one reason, self-representation.

(23) Opinion p 8-12: "... limitations...run when the 'plaintiff discovers, or through the exercise of diligence, should have discovered, the injury...a motion *should not be granted...unless it is clear...*the statute of limitations has run." "...outside the applicable statutes of limitations...they are *substantially correct...*", "...McClain's...claims...appear to be untimely": The motion should have been Denied, in fairness.

(24) "The dispositive issue...begin...when the plaintiff...notice... he may have been injured.

Accrual occurs...evidence of legal harm has been shown..." Fairfax Sav., 685 A.2d at 1202."

(25) "McClain's own filings...establish that by 2011, she had already uncovered the alleged *fraud* arising from the "fixing"..." (Opinion p 4). He unfairly used the word "fixing", a prejudicial word associated with illegal activity. Conflict: "recovery in a tort action for fraud or deceit in Maryland is based upon a defendant's deliberate intent to deceive." *Ellerin*, 337 Md. at 230, 652 A.2d at 1124..." "VF and Blue Bell filed a petition for a writ of certiorari which we granted." *V.F. Corp. v. Wrexham Aviation*, 346 Md. 28, 694 A.2d 951 (1997). "A party's mere assertion that a fraud has been perpetrated does not make it so...it is incumbent upon the movant to "prove misconduct by clear and convincing evidence". *Schultz v Butcher*, 24F.3d 626, 630 (4<sup>th</sup> Cir. 1994).

(26) Objection 95 fails the "clear and convincing" and the 5 elements standard, [(*Nails v. S & R, Inc.*, (334 Md. 398, 415, 639 A.2d 660 (1994)), a plaintiff must prove the:

- 1) defendant made a false representation,
- 2) falsity was either known...or...with reckless indifference as to its truth;
- 3) misrepresentation...for the purpose of defrauding the plaintiff;
- 4) plaintiff relied on the misrepresentation and had the right to rely on it
- 5) plaintiff suffered compensable injury resulting from the misrepresentation."

(27) This case could resolve the Unconstitutional conflict by stating accrual for fraud in Maryland "...must set forth sufficient facts to establish all of the necessary elements..." (Hay v Hay 100 Nev. 196, 678, P 2d (672) (1984)

(28) Judge Chuang implied I knew the LMA "... changed her adjustable-rate to...fixed-rate...". He states, "...locked into a fixed interest rate of 7 percent...is *higher* than the rate she had...". False, the interest rate was 7%: (LMTF, J.R. & B filed in the 2009bk Appx. A)

	<u>Pre-Modification</u>	<u>Modified</u>
Note Rate	7.0000%	7.000%

(29) He states, "in her estimation found no language converting..." estimation implies untruth.

There was no language disclosing "converting" from adjustable to fixed. July 17, 2017 letter:

“When we modified the account, the interest rate stayed at the original seven percent (7%)...”.

(Appx B)

(30) Opinion page 6: I did not appeal the dismissal at the time, I had no proof it was improper. Appendix “C” shows the sanction motions were not frivolous. The Respondents’ attorneys’ conduct was criminal and fraudulent, forging signature (22) lying to Judge Simpson and Judge Keir, filing a false. My attorney filed a false plan without my knowledge or consent. The denials justify this petition, it is further proof that due process has been DENIED.

(31) The profession I belong to, people file complaints, the people sitting on the committee also consists of non-professionals. I may never see justice, but if people who appear behind me, see justice, or is treated with more respect and humanity, whether this Supreme Court hears my case or rules in my favor, I have still achieved victory, because one person has been helped. Lawyers and judges, judging each other, no genuine checks and balances.

(32) The Second Issue: “Whether or Not the Dismissal is Tainted by Fraud”

(33) According to FRE 201(C)(2), the court “must take judicial notice if a party requests it and the court is supplied with the necessary information”. His “notice” of Objection 95 was thorough; however, his “notice” of Order 117, was perfunctory, stating: “McClain, who was represented by counsel in those bankruptcy proceedings, later withdrew her objection with prejudice. Consent Order Resolving Objection to Proof of Claim (Dkt. No. 117)” (Opinion p 4). Therefore, I wrote, “does that mean fraud...I can’t prove it” (Appellant’s Brief, May 1, 2018). Order 117, states:

(34) “...the Creditor should...*reduce the pre-petition arrears...* by \$3933.62...*the reduction of the arrears by \$3933.62, the Debtor agrees that her Amended Objection (Docket No. 95)...are hereby withdrawn, with prejudice...*the Creditor and the Debtor have *agreed that after reductions ...of...3933.62...ADJUDGED and ORDERED that after reduction...by \$3933.62,...DEEMED valid...ADJUDGED*

(35) and ORDERED...the Creditor SHALL amend its proof of claim to *reduce the pre-petition arrears by \$3933.62*.” (italics added)

(36) God is good and a God of Justice. Objection 95 may have *begun* the clock ticking, (I disagree with) Order 117 resolved” the “dispositive” issue, “injury” *suspending* the statute of limitations. Six years later, they lied to Judge Simpson that the arrears had been reduced by \$3933.62, she ruled “preclusive effect” and validated the claim. The “dispositive” word is “**AFTER**”... **then** the objections are “withdrawn with prejudice”; no statute of limitations. (Appx E) When I learned the arrears had not been reduced, I informed both Judges and Respondents’ attorneys.

(37) If the 2017 case was dead, their fraud revived it. Rule 2.2 obligates Judge Chuang to “protect a self-represented litigant’s right to be heard...”. Instead, he suppressed a crucial fact: **Order 117 is a fraud**. Determined to silence the self-represented, he fraudulently dismissed the 2017 complaint, the bankruptcy appeal and denied me the right to be heard in future cases, closing his eyes to the fraud. (case no. 8:18-cv-02084-PWG, originally assigned to Judge Chuang, Doc 7-Appx E) When I requested permission to file a sur-reply; he denied it. (Order 84)

(38) The United States Court of Appeals, 4th Circuit, defined Fraud Upon the Court as “Conduct that impacts the integrity of the court...and its ability to function impartially”, (Great Coastal; the case of Fox v Elk Run Coal Co., et al, (no. 12-2387 & 12-2402)” and stated, “any fraudulent or perjured matter...actually presented and considered by the court in reaching its decision cannot ground such a claim under the doctrine of estoppel.” (USA v Randall Conrad, 16-6579, January 13, 2017, No 16-6579).

(39) VF Corp., et al. v. Wrexham Aviation Corp. stated: “[f]raud may consist in a suppression of the truth...concealment becomes a fraud where it is effected by misleading and deceptive talk accompanied by misrepresentations, or ...there is any statement, word, or act on his part, which

tends affirmatively to the suppression of the truth, or...a covering up or disguising of the truth, or to a withdrawal or distraction of a party's attention from the real facts." (Court of Special Appeals of Maryland. 653, 686 A.2d 647 (1996) 112 Md. App. 703 November 27, 1996, No. 1700).

(40) The Supreme Court represents the top of the line for Justice, the end of the line for me to receive Justice. The Supreme Court explained,

(41) "Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent....which show that there has never been a real contest in the ...case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing." U.S. v Throckmorton, 98 U.S. 61 (1878) More so, when the Judge becomes the "opponent".

(42) FRE 103(e) states, "A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved." Please be as "troubled" as I am, that in the place of justice, there is judicial misconduct. One drop of Clorox taints a drink. If this Court detects 1 slither of unfair prejudice and/or denial of my constitutional right to be heard, the Opinion is tainted. Therefore, please, correct the injustice by Granting the petition.

Respectfully submitted,

*Iris McClain March 3, 2019*  
Iris McClain

#### CERTIFICATE OF SERVICE

This will certify that I, Iris McClain, served a copy of the Petition this 3<sup>rd</sup> day of March 2019 to the following, first class mail postage paid:

Atty. Virginia Barnhart

*Iris McClain March 3, 2019*

#### CERTIFICATION

Pursuant to Rule 14, This "Reasons For Granting The Petition" meets the word count of 2375 words and not more than 7 pages per Microsoft word count.

*Iris McClain March 3, 2019*

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Transcript pages are from the October 17, 2017 bankruptcy hearing (16-22179)

## Opinions