

No. 18- 8413

In the Supreme Court of the United States

United States Court of Appeals for the Fourth Circuit

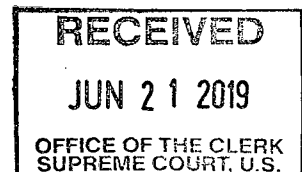
**No. 18 -1849,
Francisco Avoki v. Carolinas Telco Federal Credit
North Carolina District Court of Charlotte 3:17-cv-00746-GCM**

NOTICE OF REHEARING PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 44 of this Court, Appellant- plaintiff Francisco Avoki, *Prose in forma pauperis*, hereby respectfully petitions for rehearing of this case before a full nine-Member Court.

1. This case involves a clear defiance and insubordination of TILA¹ by the Western Charlotte District Court and the Fourth Circuit *yet* reluctant to TILA ruling of this Court; this Court Decision entered June 3, 2019 and the Clerk of this Court urged Appellant to comply with Rule 44 on and or about June 3rd, 2019 (*Exhibit 1.*) Among other things, this Court should scrutinize first the Complaint Doc.# 1 of 12/29/2017 §81 page 28 in which plaintiff Avoki **rescinded** his loan on 2/12/2013 and Defendant telco had [i]gnored plaintiff Right to rescind the loan with 90 days thus violating Tila act.

1. " Truth The Truth in Lending Act (**TILA**) of 1968 is United States federal law designed to promote the informed use of consumer credit;



2. Here is the integral text of plaintiff' complaint in TILA (*Exhibit 2*):

§ 81. To rawhide Ms. Kimberley' mishandling of TILA violation Defendant TELCO jumped on the first juncture of plaintiff' failure to pay to execute Telco' absolute desire of cancelation of the loan, therefore, Defendant TELCO [W]ilfully and [W]antonly converted the full amount rather than withdrawing two late months and intentionally refused to accept payments on 7/25/2013 and unlawfully elected to withdraw without notice, without right to cure the All saving shared account of \$ 31.829.31 Indisputably Defendant TELCO violated the TILA on November 14, 2012 and failed to answer plaintiff request of February 12, 2013 uninterruptedly to present, with a clear plaintiff intend to rescind on February 12, 2013 ignored by TECO or especially Ms. Kimberley consequently the Lender who violated TILA has lost his right to foreclosure or Conversion of the Debt and This Court should order TELCO to rescind de loan and pay back Mr. Francisco Avoki his \$35.000,00 hijacked from his shared account big lost for plaintiff Avoki and fear of dealing with Bank due to careless, neglect and violation of Tila by Defendant TELCO

3. Among other things, this Court should scrutinize also the ruling of Western District Court of Charlotte entered on 07/24/2018 Doc# 20 page 8 §k. in which the Court circumvent plaintiff Francisco Avoki right to RESCIND the loan and if the borrower like here ignored the rescind letter the Tila violation is NOT barred by one year time bar limitation, Moreover the District Court did not address TILA Violation nor the rescind right; mysteriously the District Court of Charlotte ruled about NEGLIGENT MISREPRESENTATION? Here is the Court Order extract Case 3:17-cv-00746-GCM Document 20 Filed 07/24/18 Page 8 of 11(*Exhibit 3*):

“ k. Violation of the Truth in Lending Act

Plaintiff's cause of action based upon a violation of the Truth in Lending Act (“TILA”). Claims under the TILA are subject to the one-year statute of limitations found in 15 U.S.C. § 1640(e). The statute of limitations begins to run on the date of the violation. See *id.* In the Complaint, Plaintiff claims that the TILA violation occurred on November 14, 2012. (See *id.* at ¶¶ 5 and 80). Plaintiff did not bring this proceeding until December 28, 2017. Because Plaintiff did not bring this proceeding until December 28, 2017, **his negligent misrepresentation** claim is barred by the three-year statute of limitations. Accordingly, Plaintiff's TILA claim is dismissed under Rule 12(b)(6). “ ???

4. This Court granted certiorari on the right to rescind on four principal cases:
 - (1) Jesinoski v. Countrywide, 574 U.S. ____ (2015.)² from 8th Circuit;
 - (2) KEIRAN, ALAN, ET AL. V. HOME CAPITAL, INC; In 13-1526;
 - (3) Peterson, Gary R. et Ux v. Bank of America N.A.;
 - (4) TAKUSHI F v. BAC HOME LOANS SERVICING No. 13-884.

The District Court of Charlotte and the Fourth Circuit should obey, follow and submit to this Court ruling and its guidance.

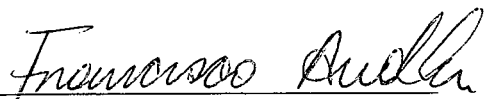
5. Ordinarily, it is exceedingly rare for this Court to grant rehearing. But when this Court notices a flagrant injustice or incoherence; It has conducted plenary review and secured the justice in this big Country for all. "[R]ehearing petitions have been granted in the past" Stephen M. Shapiro et al., Supreme Court Practice § 15.6(a), at 838 (10th ed. 2013)." For example, the government petitioned for rehearing in United States v. One 1936 Model Ford V-8; De Luxe Coach, 305 U.S. 666 (1938), in Halliburton Oil Well Cementing Co. v. Walker, 327 U.S. 812, the Court granted rehearing in February 1946, *ibid.*, and heard reargument 240 days later in October 1946, see 329 U.S. 1 (1946). Baltimore & Ohio R.R. v. Kepner, 313 U.S. 597 (1941); Toucey v. New York Life Ins. Co., 313 U.S. 596 (1941); New York, Chi. & St. Louis R.R. v. Frank, 313 U.S. 596 (1941); Commercial Molasses Corp. v. New

2. Jesinoski " Writing for a unanimous court, Justice Antonin Scalia ruled that the Truth in Lending Act does not require borrowers to file a lawsuit to effectuate rescission. Justice Scalia stated that the plain language of the act "leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind," but the act "says nothing about how that right is exercised." Although common law rules for rescission traditionally required "either that the rescinding party return what he received" or a court's "decree [of] rescission," Justice Scalia concluded that the Act did not adopt these common law requirements. Instead, he argued that "[n]othing in our jurisprudence, and no tool of statutory interpretation, requires that a congressional Act must be construed as implementing its closest common-law analogue." Consequently, the statute has effectively altered common law practice, and borrowers "need only provide written notice to a lender in order to exercise his right to rescind."^[1]

York Tank Barge Corp., 313 U.S. 596 (1941). See *MacGregor v. Westinghouse Elec. & Mfg. Co.*, 327 U.S. 812 (1946); *Bruce's Juices, Inc. v. American Can Co.*, 327 U.S. 812 (1946). *Indian Towing Co. v. United States*, 349 U.S. 926 (1955); *Ryan Stevedoring Co. v. Pan-Atl. Corp.*, 349 U.S. 926 (1955). *Timore & Ohio R.R. v. Kepner*, 314 U.S. 44 (1941) (175 days later). In a few earlier cases, several years elapsed between the grant of rehearing and reargument. See *Home Ins. Co. v. New York*, 122 U.S. 636 (1887) (granting rehearing February 7, 1887), and 134 U.S. 594 (1890) (reargument March 18-19, 1890); *Selma, Rome & Dalton R.R. v. United States*, 122 U.S. 636 (1887) (granting rehearing March 28, 1887), and 139 U.S. 560 (1891) (reargument March 25-26, 1891). 3. The need for rehearing is also more pressing here than in *Friedrichs v. California Teachers Ass'n*, 136 S. Ct. 1083, reh'g denied, No. 14-915, 2016 WL 3496857 (June 28, 2016), and in *Hawkins v. Community Bank of Raymore*, 136 S. Ct. 1072, reh'g denied, No. 14-520, 2016 WL 3461626 (June 27, 2016). By contrast, the validity of the Guidance is unlikely to arise in any future case as this Court recognized in granting certiorari in *Jesinoski's* case on TILA Controversy and the right of rescission of the loan.

6. Thus, Court instead should be the final arbiter of these matters through a more definitive ruling on TILA to deter the District Court of Charlotte and The Fourth Circuit from their exertion to circumvent the right to rescind. To be sure at least, that the law is the same everywhere for everybody in USA.
7. Petitioner Francisco Avoki respectfully requests that this Court, as it has done before, defer consideration of this rehearing petition pending grant plenary review here consistent with its disposition of TILA rescission in *Jesonisky* 574 U.S. and likewise arising from the Fourth Circuit provides the Court an opportunity to address more broadly the "disarray,"

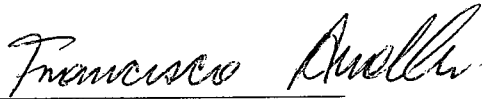
Respectfully Submitted this June 17, 2019


Francisco Avoki, In Sui Juris

CERTIFICATE OF COUNSEL

As a prose, I hereby certify that this petition for rehearing is restricted to the grounds specified in Rule 44.2 and is presented in good faith and not for delay. The grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Respectfully submitted this, June 17, 2019

A handwritten signature in cursive script, reading "Francisco Avoki".

Francisco Avoki, In Sui Juris
5127 Statesville Road
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Exhibit #2

79. The federal Truth-in-Lending Act - or "TILA" for short – requires that borrowers receive written disclosures about important terms of credit **before** they are legally bound to pay the loan. These important terms include: Annual Percentage Rate: the APR is the cost of credit expressed as a yearly rate in a percentage; Finance Charge: cost of credit expressed as a dollar amount; Amount Financed: the dollar amount of credit provided; Total of Payments: the sum of all the payments that Debtor will have made at the end of the loan, this includes repayment of the principal amount of the loan plus all of the finance charges and any extra service charge here **Life insurance**. (Telco failed and continue to fail disclosing all these fundamentals, some of them were disclosed but not all at all)

80. Telco via Ms. Kim failed to disclose other important terms such as the number of payments, the monthly payment distribution, **late fees**, whether Debtor can prepay his loan without a penalty, and other important terms. This Court will discover in discovery stage the papers tendered by Ms. Kimberley to Debtor and will conclude least that the Contract was tricky and should be rescinded for TILA Violation on November 14, 2012

81. To rawhide Ms. Kimberley' mishandling of TILA violation Defendant TELCO jumped on the first juncture of plaintiff' failure to pay to execute Telco' absolute desire of cancelation of the loan, therefore, Defendant TELCO [W]ilfully and [W]antonly converted the full amount rather than withdrawing two late months and intentionally refused to accept payments on 7/25/2013 and unlawfully elected to withdraw without notice, without right to cure the All saving shared account of \$ 31.829.31 Indisputably Defendant TELCO violated the TILA on November 14, 2012 and failed to answer plaintiff request of February 12, 2013 uninterruptedly to present, with a clear plaintiff intend to rescind on February 12, 2013 ignored by TECO or especially Ms. Kimberley consequently the Lender who violated TILA has lost his right to foreclosure or Conversion of the Debt and This Court should order TELCO to rescind de loan and pay back Mr. Francisco Avoki his \$35.000,00 hijacked from his shared account big lost for plaintiff Avoki and fear of dealing with Bank due to careless, neglect and violation of Tila by Defendant TELCO

82. WHEREFORE, Plaintiff respectfully ask the Court for Judgment in their favor and against Defendants Carolina TELCO as follows:

Plaintiff defaulted on his obligation. Accordingly, this claim should be dismissed for failure to state a claim upon which relief can be granted.

Plaintiff's ECOA claim is dismissed pursuant to Rule 12(b)(6).

j. Negligent Misrepresentation

Plaintiff's eighth cause of action is for negligent misrepresentation.

The statute of limitations applicable to negligent misrepresentation claims is three years. N.C. Gen. Stat. § 1-52(5); *see also Barger v. McCoy Hillard & Parks*, 469 S.E.2d 593, 594 (N.C. Ct. App. 1996) (“[The] plaintiffs’ claim is one for negligent misrepresentation and is governed by the statute of limitations set out in G.S. § 1-52(5).”). Plaintiff claims that the purported misrepresentation occurred on November 14, 2012. In making this claim, Plaintiff also references conduct which occurred in 2013. Because Plaintiff did not bring this proceeding until December 28, 2017, his negligent misrepresentation claim is barred by the three-year statute of limitations.

Plaintiff's negligent misrepresentation claim is dismissed pursuant to Rule 12(b)(6).

k. Violation of the Truth in Lending Act

Plaintiff's cause of action based upon a violation of the Truth in Lending Act (“TILA”).

Claims under the TILA are subject to the one-year statute of limitations found in 15 U.S.C. § 1640(e). The statute of limitations begins to run on the date of the violation. *See id.* In the Complaint, Plaintiff claims that the TILA violation occurred on November 14, 2012. (*See id.* at ¶¶ 5 and 80). Plaintiff did not bring this proceeding until December 28, 2017. Because Plaintiff did not bring this proceeding until December 28, 2017, his negligent misrepresentation claim is barred by the three-year statute of limitations.