

18-8513
No. _____

Supreme Court, U.S.
FILED
DEC 06 2018
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Mark Halper — PETITIONER
(Your Name)

vs.
Gladys Passes — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Colorado Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mark Halper
(Your Name)

P.O. Box 431
(Address)

Telluride, Co 81435
(City, State, Zip Code)

(970) 708-0954
(Phone Number)

ORIGINAL

IV. ADVISORY LISTING OF ISSUES PRESENTED FOR REVIEW

1. Whether the Colorado Supreme Court, Colorado Court of Appeals and the District Court, San Miguel County, CO were corrupt in failing to legally assess the evidence and applicable case law presented by Plaintiff, Petitioner - Appellant pro se, and in so doing, denied and deprived him of an equitable and honorable consideration for his legal arguments.

2. Whether the Colorado Court of Appeals engaged in serious wrongdoing by usurping the State of Colorado Supreme Court from a ruling duly provided for in 02SC102 Mortgage Investments Corp. v. Battle Mountain Corp. dated May 12, 2003 and as modified on Denial of Rehearing June 9, 2003. The judges of the Colorado Court of Appeals have a duty to adhere to and honor the ruling from the State of Colorado Supreme Court, and do not have the ability or discretion to interpret or render their own new opinion.

3. Whether the two part and separate rulings by San Miguel County District Court Judge Mary Deganhart were incomplete and incorrect while lacking any substantiative case precedence. The first ruling was based on a generality wherein she states that it is not illegal to ask for repayment of a debt. That notwithstanding, would be a correct statement. However, this wasn't applicable as a result of the Defendant no longer having a legal right to ask for the repayment of the alleged debt since the alleged debt was null and void, legally unenforceable, and must be extinguished under C.R.S. 13-80-103.5 and C.R.S. 38-39-207.

The second ruling was that Plaintiff did not have legal standing as the real party in

interest to bring the complaint filed in San Miguel County District Court and was not the a real party in interest, citing that he was no longer the owner of the property which had been previously transferred from Plaintiff to Sunshinemesa LLC many years earlier. Again, this ruling by San Miguel County District Court Judge Mary E. Deganhart was horribly flawed. The ruling was incomplete and incorrect. Nowhere does any case law, cited by the District Court judge or the Colorado Court of Appeals' judges, state that in order for the party to be deemed to be a real party in interest, that the individual or entity must be the owner of the property. Plaintiffs have standing to sue if they have either suffered or are threatened with an injury of sufficient magnitude to reasonably assure the relevant facts and issues will be adequately presented. The essential element of the cause of action is injury to one's interest in the property – ownership of the property is not.

The judge refused to address and adjudicate the preliminary issue presented by Plaintiff of whether the substantial amount of money (\$ 220,000.00) given by Defendant (mother) to Plaintiff (son) over a period of years prior to the execution of the Promissory Note and Deed of Trust was a gift or a loan. The judge failed to even apply sound legal principles controlling a gift and IRS rules and regulations pertaining to a gift or a loan, that would have supported and validated Plaintiff's position that the money, as referenced above, should have clearly been deemed to be a gift and not a loan.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☒ reported at November 5, 2018; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Colorado Court of Appeals court appears at Appendix B to the petition and is

☐ reported at March 8, 2018; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was March 8, 2018
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including June 29, 2018 (date) on August 8, 2018 (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

It appears that the Colorado Supreme Court is either confused or has engaged in a form of corruption and unethical conduct, so as to not be able to show the honor and integrity to enforce and uphold a Colorado Supreme Court ruling previously provided for, and the consequences therein provided for in Mortgage Investments Corp. v. Battle Mountain Corp., Supreme Court of Colorado, En Banc, No. 02SC102, Decided May 12, 2003. The attached excerpt appearing on page 6 of the Colorado Court of Appeals ORDER AFFIRMED, Case No. 17CA0288 is very clear and concise as to what is provided for and yet the Colorado Court of Appeal judges failed to properly apply the above referenced adjudicated Colorado Supreme Court ruling as well as the stated Colorado Revised Statutes 13-80-103.5(1)(a) and 38-39-207.

On the issue of "real party in interest", nowhere does it state in the two cases cited by the Colorado Court of Appeals judges in their above referenced ORDER AFFIRMED, Case No. 17CA0288, "that an owner must be the real party in interest". In fact, a "real party in interest" is one having an actual and substantial interest in the subject matter of the action and would be benefited or injured by the judgment in the action. A party enjoys standing if his stake in the resolution of that complaint assumes the proportions necessary to ensure that he will rigorously present his case. Standing is determined by a measure of the intensity of the plaintiff's claim to justice. In context of the ownership of real property, while ordinarily the owner of the real property is the party entitled to recover for injury to the property, the essential element of the cause of action is injury to one's interests in the property – ownership of the property is not an essential element of the cause of action.

STATEMENT OF THE CASE

Petitioner – Plaintiff – Appellant has clearly presented the critical issues with the STATEMENT OF CASE being provided within the document PETITION FOR WRIT CERTIORARI stamped as being received on December 26, 2018 by the Office of the Clerk, Supreme Court, U.S., and now being resubmitted with requested documents and forms.

VI. STATEMENT OF THE CASE

Plaintiff clearly had legal standing as he was the only one having executed and signed the Promissory Note and Deed of Trust, both dated July 31, 1995, which became the focal point of the case. The application of the statute [CA Code Civ. Proc. 367] while superficially concerned with procedural rules, really calls for a consideration of rights and obligations (*Jasmine Networks Inc. v. Superior Court* (2009) 180 Cal. App. 4th 980, 991). **Standing is determined by a measure of the intensity of the plaintiff's claim to justice. The real party in interest has an actual and substantial interest in the subject matter of the action and stands to be benefited or injured by a judgment in the action. Plaintiffs have standing to sue if they have either suffered or are threatened with an injury of sufficient magnitude to reasonably assure the relevant facts and issues will be adequately and vigorously presented.** This is clearly applicable and inherent within the rights of Plaintiff pro se, Mark Halper. **Ownership of the property is not the essential element of the cause of action.** The above stated legal opinion and case law from the California Court of Appeals was completely ignored by the Colorado Court of Appeals, Judge Roman Dunn and Welling, JJ., who concurred. Moreover, the case law cited in the opinion by Judge Navarro Dailey and Kapelke, JJ., i.e. See *Caley Invs. I v. Lowe Family Assocs. Ltd.*, 754 P. 2d 793,794-95 (Colo. App. 1988) and *C.R.C.P. 17(a)*; *Ewy v. Sturtevant*, 962 P2d 991, 995 (Colo.

App. 1998) is not appropriate or relevant. Nowhere does either case law cited, state that the plaintiff pro se Mark Halper, must be the owner of the property to be deemed to be the real party in interest, and have legal standing to sue.

This represents deceptive and false judicial practice and representation. This is the start of a corrupt judicial system. This can not be accepted, condoned, or permitted if there is to be honor, integrity, and justice with the Colorado judicial system and especially within the Colorado Court of Appeals and the Colorado Supreme Court.

In transferring the property from Mark Halper to Sunshinemesa LLC, on March 30, 2007, the Promissory Note dated July 31, 1995 was not assigned by Mark Halper to Sunshinemesa LLC nor was it assumed by Sunshinemesa LLC.

With the transfer of the property as referenced above, a default had occurred which provided Defendant with specific legal rights to protect and enforce those rights under the stated terms and conditions of the Promissory Note and Deed of Trust, both dated July 31, 1995. Defendant Gladys Passes never initiated any formal written notice of default, never initiated any legal foreclosure action, and never initiated any legal action to obtain a judgment lien. As a result, under C.R.S. 13-80-103.5 and C.R.S. 38-39-207, the alleged debt as evidenced by the Promissory Note and Deed of Trust both dated July 31, 1995, are now null and

void, legally unenforceable, and must be extinguished. The multiple provisions contained in the State of Colorado Supreme Court ruling 02SC102 dated 5/13/03, Mortgage Investments Corp. v. Battle Mountain Corp. is clearly the stated authority controlling this case. There are four potentially applicable statutes of limitations in this case, but only the first two apply to the case that went before San Miguel County District Court Judge Mary E. Deganhart: 1) C.R.S. 13-80-103.5 is a general statute of limitations that requires a party to bring an action to enforce obligations under a promissory note within six (6) years of default, and 2) C.R.S. 38-39-207 extinguishes the lien of the deed of trust if an action to enforce the promissory note is not brought within six (6) years of default.

San Miguel County District Court Judge Mary E. Deganhart refused and failed to accept that she had sole jurisdiction and responsibility to carry out the mandate as provided for in C.R.S. 13-80-103.5 and then more specifically required of her as district court judge in C.R.S. 38-39-207 to extinguish the lien of the deed of trust after validating that no action had been taken to enforce the Promissory Note dated July 31, 1995, and that no action was taken to obtain a judgment lien by Defendant within six (6) years of default, which occurred March 30, 2007. This mandate is clearly provided for and stated under the State of Colorado Supreme Court ruling 02SC102 as referenced above.

For the overwhelming evidence presented and the controlling C.R.S. 13-80-103.5 and C.R.S. 38-39- 207 as supported by and duly provided for in the State of Colorado Supreme Court ruling 02SC102 as referenced above, the two part and separate rulings by San Miguel County District Court Judge Mary E. Deganhart should be reversed and sent back to San Miguel County District Court Judge Mary E. Deganhart to declare the Promissory Note dated July 31, 1995 null and void and legally unenforceable, and to thereafter extinguish the Deed of Trust dated July 31, 1995.

To demonstrate the extreme unethical and unprofessional conduct and the improper ruling as it applied to the Bill of Costs, the Court of Appeals reversed the ruling affecting the Bill of Costs. Subsequently thereafter, the District Court, San Miguel County, Colorado acknowledged the legal argument of Plaintiff on this issue, and removed the amount of the Bill of Costs and attorney fees – leaving only the court fees.

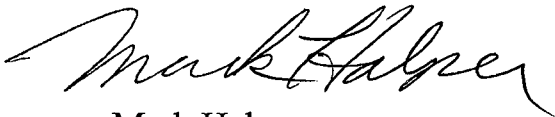
VII. REASONS FOR GRANTING THE WRIT

For the Greater Good: There is clearly a public policy reason for the U.S. Supreme Court to take this case. A District Court and even more so, a Court of Appeals must be held accountable to adhere to and enforce the rulings previously adjudicated by that state's Supreme Court. Here, we have both the District Court, San Miguel County, Colorado and then the Colorado Court of Appeals usurping the ruling of the State of Colorado Supreme Court, by instead citing a Colorado Court of Appeals case from 1979 that is no longer germane and relevant, therein providing their own interpretation and opinion, rather than properly applying the case ruled on by the State of Colorado Supreme Court in 2003 (02SC102) that effectively provided for a more timely and updated ruling. It would be an extreme detriment to any litigant if this form of unethical and unprofessional conduct were to be allowed. This can not be accepted, condoned, or allowed and permitted. If so, our judicial system would be in chaos. Perhaps, it already is. But we all must strive to do our best with honor and integrity.

VIII. CONCLUSION

Petitioner – Appellant has put forth his conscientious best with honor and integrity to comply with the procedures and content requirement with additional documents requested. Therefore, Petitioner – Appellant is now requesting that this Petition For Writ of Certiorari be accepted by the Supreme Court of the United States and assigned a Docket Number and subsequently the Petition For Writ of Certiorari be granted.

Respectfully submitted this 8th day of March, 2019.

A handwritten signature in black ink, appearing to read "Mark Halper". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark Halper
Petitioner -Appellant pro se

REASONS FOR GRANTING THE PETITION

It is the correct and honorable decision to make. Our judicial system, i.e. the District Court, San Miguel County, Colorado, the Colorado Court of Appeals, and the Colorado Supreme Court must be held accountable and responsible to perform their duties with honor and integrity – even when the plaintiff and appellant is a non-lawyer.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark Halper

Date: 1/25/19

Resubmitted 3/8/19 mth