No. 18-8523

IN THE

SUPREME COURT OF THE UNITED STATES

Akosua Tanisha Aaebo (fka Tynisha L. Reinerio)
Petitioner,
v.
The Bank of America, N.A., et al.
Respondents.

Appeal from United States Court of Appeals for the Eight Circuit

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PETITION FOR REHEARING

Akosua Aaebo

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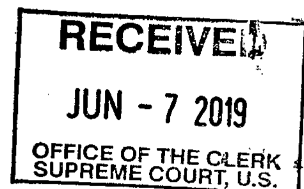
Pro Se, Petitioner



Petitioner, Akosua Aaebo, files this Petition for Rehearing in accordance with Supreme Court Rule 44 after denial of her Petition for Writ of Certiorari on April 29, 2019 to request the Court review intervening circumstances of a substantial and controlling effect in this case, in addition to other substantial grounds not previously presented.

D. CITED OPINIONS

Aaebo (fka Reinerio) v. The Bank of New York Mellon, Missouri Western District Court, Case No. 4:15-CV-161 (2015)

Aaebo (fka Reinerio) v. Bank of America, N.A., Missouri Western District Court, No. 4:16-CV-1160 (2016)

Aaebo (fka Reinerio) v. Bank of America, N.A., Eighth Circuit Court of Appeals, Case No. 17-3120 (2017)

Aaebo (fka Reinerio) v. Bank of America, N.A., Supreme Court, Case No. 18-8523 (2018)

Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619 (Mo. App., April 2010)

Central Transportation Co. v. Pullman's etc. Co. (1891) 139 U.S. 24, 59.

Obduskey v. McCarthy & Holthus LLP, Supreme Court No. 17-1307 (2019)

E. BASIS FOR JURISDICTION

The Supreme Court has jurisdiction under 28 USC § 1254, 28 USC § 2101, Supreme Court Rule 44 as well as the interpretation of the right to jury trial of the 7th Amendment of the United States Constitution and an interpretation of the due process clause of the 14th Amendment of the United States Constitution.

F. LEGAL PRINCIPLES AND CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner had consistently alleged in this case that SouthLaw, P.C. was not acting as Trustee for The Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series

2005-3 when it executed nonjudicial foreclosure against Petitioner on December 4, 2014, regarding her property located at 13128 Ashland Avenue Grandview MO 64030, but was instead was acting as a debt collector in violation of the Fair Debt Collection Practices Act. Whereas SouthLaw, P.C. had consistently alleged it was acting as Trustee for The Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-3 when it executed nonjudicial foreclosure against Petitioner on December 4, 2014, regarding her property located at 13128 Ashland Avenue Grandview MO 64030. Missouri Western District sustained in favor of SouthLaw, P.C. allegation that it was acting as trustee in its final judgment dated December 30, 2015 in Case No. 4:15-CV-00161 and September 20, 2017 in Case No. 4:16-CV-01160, which was later upheld by Eight Circuit Court of Appeals in its order(s) dated June 6, 2018 and July 16, 2018 in Case No. 17-3120. Nevertheless, the reality is that the Courts had been split for quite some time on the issue as to whether trustees and law firms providing nonjudicial foreclosure on behalf of creditors, i.e. secured parties, were or were not debt collectors under the Fair Debt Collection Practices Act ("FDCPA") until the recent opinion by Justice Breyer on March 20, 2019, Obduskey v. McCarthy & Holthus LLP, No. 17-1307, ruling that law firms acting on behalf of secured parties to foreclose on security interests in nonjudicial proceedings are not "debt collectors" and, thus, are exempt from liability under FDCPA, apart from 15 USC § 1692f(6).

Yet there remains a legal question couched within this ruling, which was rendered by Justice Breyer after Petitioner filed her Petition for Writ of Certiorari, that presents an intervening circumstance of a substantial and controlling effect in this case and would essentially leave Petitioner without legal remedy and in a state of constitutional

deprivation if not answered. The question is simple, yet it must be answered in the following three pronged approach in order to clarify Petitioner's interests and the interests of the general public in all future nonjudicial foreclosure cases.

- If a law firm is retained to act on behalf of a non-creditor to enforce non-security interests in nonjudicial foreclosure proceedings, are they debt collectors under FDCPA and if so, under which provisions of FDCPA are they bound AND what impact does their enforcement have on the legality of the nonjudicial foreclosure proceedings?
- If a law firm is retained to act on behalf of a non-creditor to enforce security interests in nonjudicial foreclosure proceedings, are they debt collectors under FDCPA and if so, under which provisions of FDCPA are they bound AND what impact does their enforcement have on the legality of the nonjudicial foreclosure proceedings?
- If a law firm is retained to act on behalf of a creditor to enforce non-security interests in nonjudicial foreclosure proceedings, are they debt collectors under FDCPA and if so, under which provisions of FDCPA are they bound AND what impact does their enforcement have on the legality of the nonjudicial foreclosure proceedings?

Summarily, if in fact law firms acting on behalf of secured parties to foreclose on security interests in nonjudicial proceedings are not "debt collectors" and, thus, are exempt from liability under the FDCPA, then the question remains... are law firms acting on behalf of **parties that may or may not be secured** to foreclose on **interests that may or may not secured** in nonjudicial proceedings "debt collectors" and under which provisions of

FDCPA, if any, are they bound AND what impact does their enforcement have on the legality of the nonjudicial foreclosure proceedings?

Further, the aforementioned ruling does not define the term "creditor", i.e. secured party, on whose behalf the law firms are acting to foreclose on security interests in nonjudicial foreclosure proceedings in the context of whether law firms are "debt collectors" under FDCPA. This is crucial because the alleged creditor in this case, BONY is not the real party in interest and does not represent the real party in interest as Trustee for The Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-3. And because in the state of Missouri defines a security instrument as BOTH the Deed of Trust and the Note, the fact that the Note presented as evidence in this case was not enforceable at the time of nonjudicial foreclosure and can never be enforced in the future, clarification is needed.

The aforementioned ruling also does not legally define the term "security interests" in the context of whether law firms are "debt collectors" under FDCPA apart from referencing the terms "mortgages" and "deeds of trusts" with regard to the limitations of the enforcement of security interests. This is crucial because the Deed of Trust submitted as evidence in this case states that it is security for a mortgage loan to Petitioner that was never transacted, nor was the alleged security interest deriving from said Deed of Trust ever perfected. Yet SouthLaw, P.C. acting as agent on behalf of The Bank of New York Mellon to enforce alleged security interest in a nonjudicial foreclosure proceeding against Petitioner did in fact sent her notice: 1) identifying The Bank of New York Mellon as creditor, 2) stating the amount due and 3) declaring itself as public trustee that would "sell the property for the purpose of paying the indebtedness" and Petitioner responded by

correspondence promptly disputing the debt. Therefore if in fact SouthLaw, P.C. was a debt collector under FDCPA regarding the nonjudicial foreclosure proceedings in this case, SouthLaw, P.C. not only violated FDCPA by launching even more aggressive collection tactics after sending the notice, including but not limited to, contracting Dolphin Homes, LLC to trespass and vandalize Petitioner's property while she was home, its collection activities substantiate Plaintiff's claims for monetary relief. (The notice from SouthLaw, P.C., the correspondence from Petitioner and the flyer posted on the property by Dolphin Homes, LLC stating they had full access to and authority over the property were submitted as evidence in Western District Court Case No. 4:15-CV-161 and 4:16-CV-1160.) Until this question is answered in the three pronged approach presented above, Petitioner will remain deprived of her right to jury trial in conflict with the 7th Amendment to the United States Constitution which provides for jury trial and states in part " In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved."

Until this question is answered in the three pronged approach presented above, Petitioner will remain deprived of her property without due process of law in conflict with the 14th Amendment to the Constitution, which prohibits the depriving of property without due process of law. The Due Process Clause of the Fourteenth Amendment to the Constitution provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law."

H. REASONS FOR GRANTING PETITION FOR REHEARING

1. Before the Court in this case is a question of law that has yet to be answered on behalf of Petitioner's interests and the interests of the general public in all future

nonjudicial foreclosure cases. The Court is being compelled to clarify limitations within the scope of law firms being exempt from liability as "debt collectors" under FDCPA when acting on behalf of unsecured creditors, i.e. unsecured parties, to enforce non-security interests in nonjudicial foreclosure proceedings. And with specificity in instances such as this case, when there has been no pecuniary loss to alleged creditors as result of an alleged debtor's failure to make payment(s).

2. SouthLaw, P.C. was not acting on behalf of a creditor to enforce security interests in the nonjudicial foreclosure proceedings in this case.
    a. The Bank of New York Mellon is not a creditor or real party in interest in this case. Nor does BONY represent a creditor or real party in interest in this case as Trustee for The Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-3. Thus SouthLaw, P.C. could not have been acting on behalf of a creditor to enforce security interest in nonjudicial foreclosure proceedings because Petitioner was not an account debtor. UCC 9-102(a)(3) which defines an account debtor as, "a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper." Petitioner owed no debt to Defendants and/or proposed defendants, and all payments made by Petitioner to said parties were fraudulently coerced.
    b. The Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-3 are distinguishable from the trust as merely buyers and sellers of certificates, are not persons as defined by Mo Rev. Stat. § 400.3-603 and UCC

§ 3-603, lack specific interest in Petitioner property according to Delaware Statutory Trust Act 12 §3805(c) and Mo. Rev. Stat. § 456.1-113, and lack legal standing/authority to sue according to Mo Rev. Stat. § 507.010.1 and Federal Rules of Civil Procedure 17(a).

c. Pooling and Service Agreement 2005-3 states The Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-3, as beneficial owners, have no specific interest in the property of the trust. Pooling & Servicing Agreement CWABS 2005-3 can be viewed free of charge at http://edgar.sec.gov/, the Securities & Exchange Commission website, under file number 333-118926-22 and at http://www.secinfo.com.

d. The Note in this case is not a legal promise as defined by UCC 3-103(a)(12) which states that "Promise" means a written undertaking to pay money signed by the person undertaking to pay and cannot be enforced or serve as security in CWABS, Inc., Asset-Backed Certificates Trust 2005-3.

e. The Deed of Trust in this case is fraudulent because the loan was never funded. Countrywide Home Loans, Inc. has failed to provide any evidence to substantiate that it funded the loan which purchased Petitioner's property including but not limited to 1) A copy of 1099INT for the duration that Countrywide Home Loans, Inc. held monies that funded the alleged loan in escrow, 2) Sworn affidavit from a party from Countrywide Home Loans, Inc. hereafter "Principal" having direct first-hand-knowledge and chain of custody of any alleged debt Petitioner owed/owes Countrywide Home Loans, Inc., 3) Certified copy of the alleged Principal's balance sheet and (Federal Reserve

form) FR2046, showing the account hereafter named 'source' that funded any advances of valuable consideration on behalf of Petitioner originated, 4) IRS form 1099OID relating to the alleged loan transaction (which will identify the true Principal and source of funds) and Form S3-A (registration) to show if, when and where the Note was sold, and/or 5) Cancelled check (bill of exchange) or draft, front and back showing the asset transfer into the account that funded the alleged loan.

f. To date Defendants have only filed a copy of the Note as evidence of security interests in Petitioner's property in violation of 15 USC § 7003, which prohibits the use of a copy of a note as evidence ownership, interest and/or rights.

3. The issues of foreclosure and trustee sale in this case are not federal matters and are governed by the state of Missouri in accordance with Mo Rev. Stat. § 443.327. Thus even if the Court finds that SouthLaw, P.C. was acting on behalf of a creditor, it was still acting to enforce non-security interests in the nonjudicial foreclosure proceedings in this case.

    a. Missouri requires the foreclosing party to produce the original wet-ink signature note to prove said party is/was holder of the note and/or owner of the property at the time of non-judicial foreclosure and defendants in this case have failed to provide the original wet-ink signature note as proof of security interests. *In re Washington, 468 B.R. 846, 853 (Bankr. W.D. Mo. 2011)*

b. Mo. Rev. Stat. §456.2-201 makes clear that the Court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law including the enforcement of Pooling and Service Agreement 2005-3 to clarify The Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2005-3 have no specific interest in Petitioner's property.

4. The state of Missouri defines a security instrument as a Deed of Trust and Note that has never been separated. "In the event that the note and the deed of trust are split, the note, as a practical matter becomes unsecured. The practical effect of splitting the deed of trust from the promissory note is to make it impossible for the holder of the note to foreclose, unless the holder of the deed of trust is the agent of the holder of the note. Id. Without the agency relationship, the person holding only the note lacks the power to foreclose in the event of default. The person holding only the deed of trust will never experience default because only the holder of the note is entitled to payment of the underlying obligation. Id. The mortgage loan became ineffectual when the note holder did not also hold the deed of trust." *Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619 (Mo. App., April 2010)*

    a. Missouri law states that a foreign corporation or individual may only act as trustee of any security instrument if it is named as co-trustee with a domestic corporation or an individual citizen of Missouri according to Mo. Rev. Stat. § 443.350. Thus the Assignment of Deed of Trust to BONY on February 13, 2012 evidences that the Note and Deed of Trust was separated long before nonjudicial foreclosure because MERS lacked legal authority to assign the

note to BONY because the provisions detailed in the note grant MERS absolutely no authority to transfer the note and because the only reference to MERS as a designated assignee is detailed in the Deed of Trust and states:

"MERS" is the Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel (888) 679-MERS.

b. The Note presented as evidence in this case was not enforceable at the time of nonjudicial foreclosure and can never be enforced in the future. The stamp on the last page of the copy of the note Defendants filed as evidence reads, "Pay to the Order Of ___________ Without Recourse" and is accompanied by the signature of an unnamed payee. This is not an endorsement in blank because by virtue of its name a "blank endorsement" does not also contain the signature of an unnamed payee. Mo. Rev. Stat. § 400.3-205 and UCC § 3-110(b)) states "If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so." Because the signature of the issuer in this instance is made by automated means and reads "Countrywide Home Loans, Inc., a New York Corporation Doing Business as America's Wholesale Lender" payee of the instrument is

determined by the intent of the person who supplied the name or identification of the payee. Yet the intent of the signer, David A. Spector, remains unknown because he failed to name or identify the payee. Thus the combination of said stamp and signature evidences a failed attempt to negotiate the instrument according to Mo. Rev. Stat. § 400.3-205 and UCC § 3-110(b), and further proves Defendants could not have been holders of the note endorsed in blank.

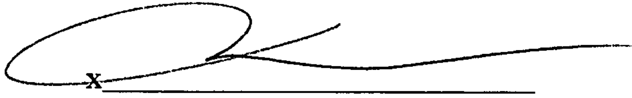
c. No interest was perfected in Petitioner's property on or before March 20, 2005 in accordance with the 20 day "temporary perfection" provided by UCC 9-312(e),(f),(g)[1] upon the e-note being sold into a REMIC. And because no security interest was perfected, on the 21st day it became an unsecured interest and lien rights were not acquired according to Mo. Rev. Stat. §443.035.

- [1] The Federal Uniform Commercial Code (UCC) has been adopted by all 50 state's legislatures therefore the Federal code or state's equivalent is subject to venue.

I. CONCLUSION

The Petitioner requests the Court grant her Petition for Rehearing.

Respectfully Submitted,



x____________________________

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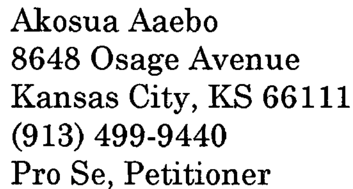
CERTIFICATION

I, Akosua Aaebo, do swear and declare that this petition is restricted to the grounds specified at paragraph 2 of Rule 44 and is presented in good faith and no for delay.



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Date: June 4, 2019