NO._____

In the
Supreme Court of the United States

OWEN W. BARNABY — PETITIONER

VS.
BRET WITKOWSKI, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT Of APPEALS
FOR THE SIXTH CIRCUIT
CINCINATI, OHIO

PETITION FOR A WRIT OF CERTIORARI

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Date April 15, 2019

IN THE

SUPREME COURT OF THE UNITED STATES

OWEN W. BARNABY — PETITIONER

VS.

COUNTY TREASURER, BRET WITKOWSKI
And BERRIEN COUNTY GOVERNMENT— RESPONDENTS

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QUESTIONS PRESENTED

Should Res judicata and Collateral, Estoppel Doctrines be able to Barr an Independent or an Original Action in Federal Court when; the Defendants Wittingly employed fraudulent tactics in the State Court proceedings to procure state court judgment, which defrauded and deprived Plaintiff of his constitutional due process rights granted him by the Fourteen Amendment Section I?

Should Res judicata and Collateral, Estoppel Doctrines be able to Barr an Original Federal Complaint when the State Court Determined that; both the Claim and the issues were not fully litigated in the state Court and Referred Petitioner to other Court to have the matter to be fully litigated?

What is the proper application of "The-Law-of-the-Case-Doctrine", when a case is fully litigated in Federal Court prior to remand?

Should Defendants Opposition Brief being wittingly unsigned be able to Triumph over Plaintiff's signed Brief, per Fed R. Civ. P. 11(a)?

TABLE OF CONTENTS

INDEX TO APPENDICES

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OPINIONS BELOW

The opinion of the United States court of appeals Sixth Circuit's is reprinted and appears at Appendix A: to the petition and was, NOT RECOMMENDED FOR FULL-TEXT PUBLICATION File Name: 18a0627n.06 Nos. 18-1121/1128. The opinion of the United States District Court reprinted and appears at Appendix B: to the petition and has been designated for publication. And the United States Court of appeals denial of Timely Panel Rehearing reprinted and appears at Appendix C. Fourth Circuit's

JURISDICTION

The date on which the United States Court of Appeals decided my case, was on December 18, 2018. Furthermore a timely petition for rehearing was denied by the United States Court of Appeals on the January 14, 2019. The 90th day is Sunday April 14, 2019, which is not work day. As such Petitioner mail his petition on Monday April 15, 2019. The order denying rehearing appears at Appendix C. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1), or any other relevant laws.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Fourteen Amendment Section I vs. Res judicata and Collateral, Estoppel Doctrines

2. The due process causes vs. Res judicata and Collateral, Estoppel Doctrines

3. Contract laws vs. Res judicata and Collateral, Estoppel Doctrines

4. The-Law-of-the-Case-Doctrine", vs. Res judicata and Collateral, Estoppel Doctrines

18 U.S.C. §1621, perjury.

SETTLED STATEMENT OF THE CASE

The Petitioner and Respondents entered into oral contract on tax payment on the parcel at the center of the issue Niles Township parcel# 11-14-0112-0011-17-4/ 2116 S. 15th St Township. However, to pay $305.73 via verbal partial payment agreement with written receipt, and that the tax year in question, Base Tax was $189.53; Admin $7.58; Interest as of March 1, 2010 $71.07; Other Fees $231.88; Total Due $506.05; and total PAID $305.73 which exceeded the tax owed in the same tax year in dispute.

On March 01, 2010, Chief Judge Alfred Butzbaugh and Defendant Treasurer Witkowski who was never an Attorney wittingly [colluded], and allowed Witkowski to illegally represent or prosecute Berrien County' Tax Foreclosure Hearing; impersonating County Attorney Mc Kinley Elliott (P34337) and intentionally concealed it from Barnaby. Witkowski, testified in Federal Court's deposition that, Judge Butzbaugh gave him privileges to represent the County. Yet, Judge Butzbaugh did not [recuse] himself [but] entered the judgment in the case, in violation of 28 U.S.C. § 455(a), (b); MCR 2.003 (C); and Michigan Code of Judicial Conduct Canon 2. The judgment which arise out of the [collusion] between Judge Butzbaugh and Witkowski, was signed and entered by Judge Butzbaugh on August 18, 2010 unknown to Barnaby then. Neither

Judge Butzbaugh nor Witkowski served Barnaby a copy of the notice of hearing or Judgment, Barnaby learnt of it two years later, September 2012. The 2010 tax year. The General Property Tax Act, P.A. 206 of 1893, as amended (MCL 211.1 et seq.) GPTA mandated, for judgment to be valid, it had to be signed and entered by Judge Butzbaugh on or before March 01, 2010.

Subsequently, Judge Butzbaugh created and entered a distorted judgment on July 06, 2012 that his August 18, 2010 judgment was entered March 01, 2010, which misled Barnaby, Barnaby argues fraud upon the court", (Exhibit A18). Witkowski, committed extrinsic and intrinsic fraud in written and oral sworn testimonies; perjuries both in state court and federal court that, August 18, 2010 judgment was entered March 01, 2010. (Exhibits A1- A9; A18; A22; B3- B5). Judge Butzbaugh, Witkowski and Attorney Elliott collude to have Witkowski impersonate Attorney Elliot, contravened Michigan law, the Penal Code Act 328 of 1931 Section 750.217(c); is a misdemeanor, 1 year imprisonment or a $1,000.00 fine or both. Attorney Elliott, created the August 18, 2010 judgement, Treasurer Witkowski impersonated Attorney Elliot before Judge Butzbaugh on March 01, 2010 to get the judgment and Judge Butzbaugh signed and entered the judgment on August 18, 2010, then they conspired, concealed it and misled Barnaby.

Barnaby filed 'Motion for New Hearing' on verbal agreement between the parties. Presiding Judge John E. Dewane, took over the case from Judge Butzbaugh. Throughout the proceedings with Judge Dewane, Witkowski fraudulently and criminally maintained both by sworn written and oral testimonies, that August 18, 2010 foreclosure void Judgment was entered March 01, 2010, Exhibits A4; A20-A22. Judge Dewane, colluded with Witkowski, and Attorney Howard, and suppressed the material of the case, yet did not recuse himself as trier of fact, in violation of 28 U.S.C. § 455(a), (b); MCR 2.003 (C) and Michigan Code of Judicial Conduct Canon 2. Judge Dewane's collusions and reliance on Judge Butzbaugh's August 18, 2010 void

Judgment, prevented res judicata "decided on the merits" and collateral estoppel, from "full and fair opportunity of litigating". Then concluded, Barnaby's due process right was not violated and advised Barnaby to seek monetary relief in State Court of Claims. The United States Supreme Court has observed, "A fair trial in a fair tribunal is a basic requirement of due process".

REASONS FOR GRANTING THE WRIT

I. The Sixth Circuit and the District Court Refused to Follow *the Fourteenth Amendment Section I* and Other Precedents from this Court in respect to Res judicata and Collateral Estoppel Doctrine.

That, Res judicata and Collateral Estoppel Doctrines do not Barr an Independent or an Original Action in Federal when the Defendants Wittingly employed fraudulent tactics in the State Court proceedings to procure state court judgment, which defrauded and deprived Plaintiff of his constitutional due process rights granted him by the Fourteenth Amendment Section I.

It is manifest that, both Opinions focused only on the State Court's incomplete and inaccurate conclusion of the August 18, 2010, judgment, (Dkt#125. Exhibit B) which stated because Barnaby "had notice", it did not raise to egregious constitutional due process violation, even though the State Court also finds that, "There's no doubt about that the sale should not have held before judgment was entered". (Dkt#85. Exhibit A19 pageID747-9). And that, "I meant the court of claims. The court of claims will then decide whether the –there's a valid cause of action and, if so, what remedy in terms of monetary damages are." See, 28 U.S.C.

§1331 and Act of 1996, 28 U.S.C. §1332. (Dkt#85. Exhibit A19 pageID749 Line 18, 19, 20). As such Res judicata, and collateral estoppel cannot usurp Barnaby's constitutional Due Process rights to; appeals by right, as this opinion concluded.

> He cannot try to prove in federal court what he failed to prove in state court. Similarly, the state court rejected Barnaby's motion to rescind the property sale because the court determined that the sales procedure did not violate Barnaby's due process rights. That ruling bars Barnaby's due-process claim here on the same grounds. "Id. at *7."

The Opinions misapprehends and overlooks the facts of, the State Court's specific findings that, Barnaby's due process was not violated because Barnaby "had notice" of the July 20, 2010 sale, is separate and independent of these material facts, Barnaby's constitutional due Process rights; to an appeal by right, both on the August 18, 2010 and the July 13, 2012 judgments were violated. (DKT 125, Exhibits B, K) See 4th; 5th and 14th Amendment section I. and 42 USCS 1983.

a. Proper Independent Actions Are Not Barred by Res judicata and Collateral Estoppel Doctrine.

When Res judicata and Collateral, Estoppel Doctrines are able to Barr an Original Federal Complaint when the State Court Determined that, both the Claim and the issues were not fully litigated in the state Court and Referred Appellant to other Court to be fully litigated as it with this case. Further, that no part of Barnaby's complaint is barred by the doctrines of res judicata and collateral estoppel, inclusive of the section of the Opinions titled, "re-litigate them in a federal forum. Id. at *3-6.", As: (a), Barnaby's Due Process were violated (b).

Barnaby was advised by State Court which was affirmed by this Sixth Circuit Court; "The state court advised Barnaby that he could pursue his case in the Michigan Court of Claims, which had jurisdiction over suits for money damages against the state government." (Barnaby v. Witkowski, et al, No. 16-1207, 2017 WL 3701727, (6th Cir. Feb. 17, 2017); Act of 1996, 28 U.S.C. §1332.

b. The Decision in this Case Conflicts with State of Michigan, other States and Circuit and this Court's Precedents.

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. Renaud v. Abbott, 116 US 277, 29 L Ed 629, 6 S Ct 1194. Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. Earle v McVeigh, 91 US 503, 23 L Ed 398. No Opportunity to Be Heard A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. Sabariego v Maverick, 124 US 261, 31 L Ed 430, 8 S Ct 461, and is not entitled to respect in any other tribunal.

II. There Is a Split Among the State Court of Michigan, the Federal District Court and the Federal Appeals Sixth Circuit Court Refused to Follow the advise of State Court of Michigan that the case was not res judicata "decided on the merits" and collateral estoppel, "full and Fair Opportunity to Litigate".

Constitution of United States of America 1789 (rev. 1992) Section 1 of the Fourteenth Amendment: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[M]anifest injustice means, something which is 'obviously unfair' or 'shocking to the conscience.' It refers to an unfairness that is direct, obvious, and observable. Penal Code Act 328 of 1931 Section 750.217(c) and the General Property Tax Act, P.A. 206 of 1893, as amended (MCL 211.1 et seq.) [GPTA]

a. The State of Michigan and Other States Allow Independent Actions or Original Actions in Federal Court When Res judicata was not "decided on the merits" and collateral estoppel, "was not full and Fair Opportunity to Litigate" and Court Judgments Procured Through Fraud and Due Process violations.

Both State Court and Federal Court identified fraud and mistake as bases for Original Actions. *Resolute Ins. Co. v. North Carolina*, 397 F.2d 586, 589 (4th Cir. 1968) ("[A] federal court may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake . . . ."). Examples, *Id.* at 589 n.2 (citing *Atchison*, *Simon*, and *Wells Fargo*). Here is the Sixth Circuit relied directly on the Fourth Circuit's

decision in *Resolute Insurance. See, e.g., In re Sun Valley Foods Co.*, 801 F.2d 186, 189 (6th Cir. 1986); See, e.g., Sitton v. United States, 413 F.2d 1386, 1389–90 & n.2 (5th Cir. 1969) (citing Atchison); Griffith v. Bank of N.Y., 147 F.2d 899, 901 (2d Cir. 1945) (citing Marshall); Kougasian v. TMSL, Inc., 359 F.3d 1136, 1141 (9th Cir. 2004) (citing Barrow).

In Contrast See, e.g., Scott v. Frankel, 606 F. App'x 529, 532 n.4 (11th Cir. 2015), West v. Evergreen Highlands Ass'n, 213 F. App'x 670, 674 n.3 (10th Cir. 2007); Williams v. Liberty Mut. Ins. Co., No. 04-30768, 2005 WL 776170, at *1 (5th Cir. Apr. 7, 2005); Kropelnicki v. Siegel, 290 F.3d 118, 128 (2d Cir. 2002); Fielder v. Credit Acceptance Corp., 188 F.3d 1031, 1036 (8th Cir. 1999) (describing the application of Rooker–Feldman in this area as "enigmatic").

b. There Is a Split within the Six Circuit itself in respect to Allowing Independent Action or Original Action in Federal Court when Defendants Contravene State Laws and violated Plaintiff's "Due process of Law" and "Equal Protection of the Laws. See, 14th Amendment Section I.

The opinion(s) misapprehended and overlooked the settled material facts that, on August 1, 2012 Barnaby filed an appeal by right in the 'Court of Appeals, State of Michigan', 'within the 21 days' time limit' to appeal the July 13, 2012 inaccurate judgment in the state court by right which was dismissed on October 23, 2012. Dismissal of an appeal by right of the July 13, 2012 (DKT 125, Exhibit K) inaccurate order; prevented Barnaby form proving the breach of contract cause of

action which violated his constitutional rights to a fair and full trial on merits, and severely prejudiced him. (DKT 125, Exhibits B; K; L-1; L-2; N). The 'Michigan Appeals Court, in dismissing the appeal by right [relied] on the prior August 18, 2010 Judgment (DKT 125, Exhibit B) judgment which Defendants procured fraudulently that contravened Michigan laws General Property Tax Act, P.A. 206 of 1893, amended (MCL 211.1 et seq.) ("GPTA"); Penal Code Act 328 of 1931 Section 750.217(c).

Barnaby first learnt of the August 18, 2010 inaccurate judgment during his filing in the 'Court of Appeals, State of Michigan, proceedings, September of, 2012 because Defendants wittingly concealed it. The Defendants intentional concealment of the August 18, 2010 inaccurate order deprived Barnaby from filing an appeal by right "to rescind the property sale", which violated his constitutional rights, to an appeal by right the same judgment, per 14th Amendment section I.

c. There is Split Over the proper application of "The-Law-of-the-Case-Doctrine", when properly litigated in Federal Court prior to remand?

The proper application of "The-Law-of-the-Case-Doctrine", when properly litigated in Federal Court prior to remand; in the District Court there is a prominent case law in the Western District, of Michigan See, Stryker Corp. V. TIG Insurance Co. Case No. 1:05 –cv-51(U.S. District Western MI.

> "Law of the Case can mean two different things depending on context. First, it may refer to the requirement that a District Court follows the laws as

established by an Appellate court in earlier proceeding in the same case.... Second the term may refer to the discretion that a district court has to adhere to its own legal rulings made at an earlier stage of the same case.

The fact that both parties' litigated res judicata and collateral estoppel and the District Court made final judgment, a second raising of the same issues is reconsideration, and should be barred by the-law-of-the-case-doctrine. Should the District Court adhere to the case law above it would have yielded a different result in favor of Barnaby. As this 'Sixth Circuit Appellate Court' and the 'USA Supreme Court' have shorten the long arm of the Rooker-Feldman Doctrine, Perhaps this would be a good time to mandate the proper application, of 'The-Law of-the-Case, for predictability and confidence in the judicial system.

d. There Is a Split within the District Court itself and Six Circuit in respect to Should Defendants Opposition Brief that is wittingly unsigned be able to Triumph over Plaintiff's signed Brief, per Fed R. Civ. P. 11(a).

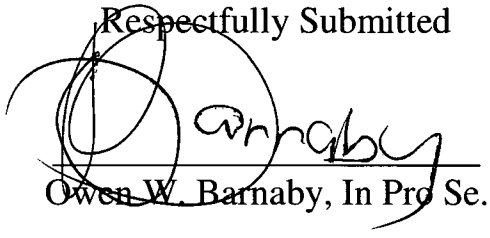
There Is a Split within the District Court itself in respect to, Should Defendants Opposition Brief that is wittingly unsigned be able to Triumph over Plaintiff's signed Brief, per Fed R. Civ. P. 11(a). Appellees' motion (Dkt#124) filed on October 30, 2017 which is bared by the 'The Law of the Case Doctrine', filed over six months later as the opposition [brief] to Appellant Motion (Dkt#85) filed on April 13, 2017, which contravene, W.D. Mich. L. Civ. R 7.2 (c) "Briefing schedule –"within twenty-eight (28) days" ... "file a responsive brief". As such the Order and Judgement embodies Manifest Error and Manifest Injustice, that if not

overturned will irreparable prejudice Appellant. See, [Julia K. Cowles, Rule 11 of the Federal Rules of Civil Procedure and the Duty to Withdraw a Baseless Pleading, 56 Fordham L. Rev. 697 (1988).] see (Dkt#52) and (Dkt#55).

CONCLUSION

For these reasons articulated Petitioner, respectfully requests that his petition for certiorari be granted.

Respectfully Submitted



Dated: April 15, 2019

Owen W. Barnaby, In Pro Se.