

No. _____

**In The
Supreme Court of the United States**

S. BRUCE HIRAN and HUNG N. YI,

Petitioners,

v.

JELINIS, LLC,

Respondent.

On Petition for Writ of Certiorari to the Fourteenth
Court of Appeals, Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether Petitioners' Constitutional Rights of Due Process and Equal Protection of Laws are violated while the Appellate Court reversed the Temporary Injunction and Supreme Court of Texas denied their Petition for Review?

PARTIES TO THE PROCEEDING

The parties to the proceeding in the courts, whose judgments or orders are subject of this petition includes:

Petitioners are S. Bruce Hiran and Hung N. Yi (Plaintiffs in the trial court and Appellees in the Fourteenth Court of Appeals and Petitioners in the Supreme Court of Texas).

Respondent is Jelinis, LLC (Defendant in the trial court and Appellant in the Fourteenth Court of Appeals and Respondent in the Supreme Court of Texas).

LIST OF RELATED CASES

Herein-below is the list of all proceedings/related cases in other courts that are directly related to the case in this Court:

- *Deutsche Bank National Trust, as Trustee, In Trust For the Registered Holders of Long Beach Mortgage Loan Trust 2006-10, Asset Backed Certificates Series 2006-10 v. S Bruce Hiran and Hung N. Yi*, No. 2014-51232, 270th Judicial District Court of Harris County, Texas (Foreclosure lawsuit). Final judgment entered on November 20, 2015.
- *Hiran v. Long Beach Mortgage Company*, No. 2017-06257, 151st Judicial District Court of Harris County. Temporary Injunction granted on March 10, 2017. Trial on merits is set for February 17, 2020.

- *Jelinis, LLC v. Hiran*, No. 14-17-00220-CV, The Fourteenth Court of Appeals of Texas. Opinion & Judgment entered on May 31, 2018 (557 S.W.3d 159).
- *S. Bruce Hiran and Hung N. Yi v. Jelinis, LLC*, No. 18-0956, Supreme Court of Texas. Petition for Review denied on March 1, 2019. Motion for Rehearing denied on April 26, 2019.
- *Jelinis LLC v. S. Bruce Hiran, Hung N. Yi*, No 191200217255, Eviction lawsuit filed in the Justice Court of Harris County, Texas Precinct 1, Place 2. Currently, Appeal is pending in the County Court at Law, Harris County, Texas.

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**PETITION FOR A WRIT OF CERTIORARI TO
THE FOURTEENTH COURT OF APPEALS
TEXAS**

Petitioners, S. Bruce Hiran and Hung N. Yi, respectfully petition for a writ of certiorari to review the opinion and judgment of the Fourteenth Court of Appeals Texas and Texas Supreme Court's denial of Petition for Review and Motion for Rehearing.

OPINIONS BELOW

On May 31, 2018, the Fourteenth Court of Appeals, Texas issued a published opinion in *Jelinis, LLC v. Hiran* (Tex.Ct.App. 2018) 557 S.W.3d 159, by which it reversed the grant of injunction and rendered in part and affirmed in part (Opinion is reproduced in the Appendix A page 1a & Appendix B page 40a respectively). While no opinion was issued and the decision was unpublished, on March 1, 2019, the order denying petition for review was entered (No. 18-0956 of the Supreme Court of Texas is reproduced in the

Appendix F page 73a). On April 26, 2019, the Supreme Court of Texas denied the motion for rehearing of the order denying petition for review (No. 18-0956 of the Supreme Court of Texas is reproduced in the Appendix G page 74a).

JURISDICTION

The last decision of the Supreme Court of Texas denying the petition for review of the opinion and judgment of the Fourteenth Court of Appeals was entered on March 1, 2019, Appendix F page 73a and Motion for Rehearing was denied on April 26, 2019. Appendix G page 74a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a), and the Fourteenth Amendment of the United States Constitution.

STATUTORY PROVISIONS INVOLVED

USCS Const. Amend. 14, § 1 provides:

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.

28 U.S.C. § 1257(a) provides:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or

the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

The dispute at issue involves the violation of Petitioners' constitutional right to property. At the core of the issue the dispute is pertaining to the ownership and title to a real property. Petitioners and Respondent have competing interests in the residential real property and improvements thereon located at 4132 Lehigh Avenue, Houston, TX 77005 (the "Property"). On or about June 6, 2006, Petitioners purchased the Property. During the process of entering into the Home Equity Loan, Petitioners executed a Texas Home Equity Note ("Note") in the amount of \$800,000 which was payable to Long Beach Mortgage Company ("Long Beach").

Additionally, Petitioners executed a Texas Home Equity Security Instrument ("Deed of Trust").

Upon information and belief, the Note and Deed of Trust were subsequently transferred to Deutsche Bank for which Select Portfolio Servicing, Inc. (“SPS”) acted as the loan servicer.

During the term of the Note, Petitoiners began to receive notices that they were past due on the payments of the Note. Petitioners did not understand how that could be true since they were making their payments on the Note in full and in a timely manner. Accordingly Petitioners expected that the notices must be a clerical error which will be remedied in due course. As such, Petitioners ignored the delinquency notices which they received from SPS.

Thus, due to the nature and extent of their delinquency, on or about September 8, 2014, Deutsche Bank filed an Application for Home Equity Foreclosure Order which case is styled Cause No. 2014-51232; Deutsche Bank National Trust, as

Trustee, In Trust for the Registered Holders of Long Beach Mortgage Loan Trust 2006-10, Asset Backed Certificates Series 2006-10 v. S. Bruce Hiran and Hung N. Yi; in the 270th Judicial District Court of Harris County, Texas (the “Foreclosure Lawsuit”).

The Foreclosure Lawsuit culminated in a Final in rem Judgment against the Petitioners which authorized a non-judicial foreclosure sale of the Property and the Property was sold by Deutsche Bank to Respondent at a foreclosure sale on December 6, 2016. On or about January 12, 2017, Respondent filed a forcible detainer lawsuit in the Justice Court of Harris County, Precinct 1 for the eviction of the Petitioners and all other occupants of the Property from the Property. During the course of investigating the instant lawsuit Petitioner S. Bruce Hiran informed his counsel that Petitioners had not

executed the Note and Deed of Trust which were attached as exhibits to the Foreclosure Lawsuit.

Petitioners pointed that although their signatures appear to be valid, but certain pages of the Note and Deed of Trust must have been switched by representatives of Long Beach because Petitioners' Home Equity Loan was a fixed rate of 2% interest and, instead, the Note and Deed of Trust attached as exhibits to the Foreclosure Lawsuit are purported to be an adjustable rate note at 7.975% interest.

Thereafter on or about January 30, 2017, Petitioners filed their Original Petition, Application for Temporary Injunction, and Request for Disclosure because the exhibits which were the legal basis for Deutsche Bank being awarded a judgment authorizing them to sell Petitioners' Property at foreclosure sale are fraudulent; therefore, the

foreclosure sale of Petitioners' Property should be deemed void and rescinded.

Moreover they also alleged in the lawsuit that the Home Equity Loan itself was fraudulent as a result of Long Beach Mortgage's representative switching the loan documents unbeknownst to them; therefore Petitioners' home equity loan should be deemed void ab initio. In this Lawsuit, Petitioners also sought an injunction to restrain Respondent from selling the Property as well as from taking any legal action to evict them and all other occupants of the Property.

On or about February 24, 2017, Petitioners' Application for Temporary Injunction was being heard and a temporary injunction was granted on March 10, 2017, thereby the Trial Court restrained Respondent, its members, directors, and legal counsel from selling the Subject Property during the pendency of this

lawsuit. The trial court's order granting an injunction (Cause No. 2017-06257, 151st Judicial District Court, Harris County, Texas) is reproduced in the Appendix E page 69a. The Trial Court in its Order specifically mentioned that "...the Court finds that there is evidence of a discrepancy in the home equity loan note between the interest rate (fixed) allegedly agreed to and the adjustable interest rate in the document introduced at the temporary injunction hearing. Further, the Court finds that the final relief granted in the lawsuit in the 270th District Court was only in rem pursuant to TRCP 735 and therefore likely does not have preclusive effect on Plaintiff's claims in this suit as a matter of law." Appendix E page 71a.

After trial court granted temporary injunction, Respondent filed an appeal to the Fourteenth Court of Appeals, Texas. Respondent argued that trial court erred in granting a temporary injunction prohibiting

the eviction because Petitioners stated not causes of action against Respondent.

On or about May 31, 2018, The Fourteenth Court of Appeals, Texas reversed the trial court's grant of temporary injunction and held that the trial court erred in enjoining Respondent from pursuing its forcible detainer suit in justice court to evict Petitioners because *Petitioners are subject to a tenancy-at-sufferance clause contained in the Deed of Trust; the questions of possession and title are not intertwined; and justice court has jurisdiction over the issue of possession.* [Emphasis added]. Appendix A page 35a & 36a.

Petitioners challenged the entirety of the loan documents being void at initio. The court of appeals concluded that Petitioners have failed to challenge the tenancy-at-sufferance clause and the failure to

challenge the tenancy-at-sufferance clause means the issue of title and possession is not intertwined.

However, Chief Justice Kem Thompson Frost in his Concurring opinion stated that, “if the Note and Deed of Trust are void, as Hiran and Yi allege, then Deutsche National bank would have lacked title to the property and so could not have transferred the title to Jelinis at the foreclosure sale”. In addition, if the Note and Deed of Trust are void, then Jelinis cannot rely on the tenancy-at sufferance clause in the Deed of Trust to establish a forcible detainer. Appendix B pages 48a & 49a.

On or about August 30, 2018, Petitioners’ Motion for Reconsideration and Motion for En Banc Reconsideration were also denied by the court of appeal. Appendix C & D pages 61a & 65a.

After the denial from Fourteenth Court of Appeals, on October 29, 2018, Petitioners moved to the

Supreme Court of Texas to review the reversal of temporary injunction by filing the Petition for Review. On March 1, 2019, the Supreme Court of Texas denied Petitioners' **petition for review without providing any written explanation or reasons for its ruling**. Appendix F page 73a. Petitioners timely filed motion for rehearing. On April 26, 2019, **without any reasoning or explanation, the Supreme Court of Texas denied Petitioners' motion for rehearing**. Appendix G page 74a.

REASONS FOR GRANTING THE WRIT

This Court has often held that the opportunity to be heard in a meaningful manner and meaningful time is essential part of the constitutional due process right.

In this case, Fourteenth Court of Appeals erred in reversing the trial court judgment and denying the temporary injunction to the Petitioners. The

Petitioners challenged the entire Note and Deed of Trust as void because certain pages were switched by Long Beach Mortgage to change the rate of interest. Petitioners never agreed to pay such a high rate of interest. The court of appeals held that Petitioners failed to challenge the tenancy-at-sufferance clause contained in the Deed of Trust; therefore, question of possession and title are not intertwined; and the justice court has jurisdiction over the issue of possession.

In this case, the Supreme Court of Texas denied Petitioners' petition for review and motion for rehearing without any reasons or explanations.

Therefore, Certiorari should be granted because the decision matter of this Petition is in conflict with the constitutional principles safeguarded by this Honorable Court on the Amendment XIV to the US Constitution.

1. This Court Should Grant Certiorari Because Petitioners' Constitutional Rights of Due Process and Equal Protection of Laws Are Violated While the Fourteenth Court of Appeals Reversed the Temporary Injunction and Supreme Court of Texas Denied Their Petition for Review and Motion for Re-hearing Without Any Reasons or Explanations.

The Fourteenth Court of Appeals, Texas and the Texas Supreme Court's rulings violate the Equal Protection Clause and the Due Process Clause of the United States Constitution by denying Petitioners their rights to equal protection of laws as afforded Petitioners by the Fourteenth Amendment of the U.S. Constitution and by depriving Petitioners of their right to due process of the law as afforded them by the Fifth and the Fourteenth Amendments of the U.S. Constitution. U.S. CONST., amend XIV; U.S. CONST., amend. V. See *Adarand Constructors, Inc. v. Slater*, 145 L. Ed. 2d 650 (2000); *City of Chicago v. Morales*, 144 L. Ed. 2d 67 (2000); *Florida Prepaid*

Postsecondary Education Expense Board v. College Savings Bank, 144 L. Ed. 2d 575 (1999); [*35] *Hunt v. Cromartie*, 143 L. Ed. 2d 731 (1999); *Moore v. City of East Cleveland Ohio*, 431 U.S. 494 (1977); *Troxel v. Granville*, 147 L. Ed. 2d 49 (2000).

Further Petitioners were not afforded due course of law as guaranteed by the Texas Constitution TX. CONST. Article 1 Sec. 19 and Petitioners were not afforded due process of law as afforded by the U.S. Constitution, U.S. CONST., amend., V. and U.S. CONST., amend XIV. The Texas court system's rulings violate the Equal Protection Clause and the Due Process Clause of the United States Constitution by denying Petitioners their rights to equal protection of laws as afforded them by the Fourteenth Amendment of the U.S. Constitution and by depriving them of their right to due process of the law as

afforded to Petitioners by the 5th and the 14th Amendments of the U.S. Constitution.

The denial of equal protection of the laws and the deprivation of due process is twofold in this case. First, the lawsuit out of which this dispute arose was tried in Harris County District Court in, Texas and was tried and decided pursuant to Texas law. Second, the Texas state court system (including Fourteenth Court of Appeals and Texas Supreme Court) denied Petitioners equal protection of laws and deprived Petitioners of due process in violation of the Fourteenth and Fifth amendments of the United States Constitution.

Accordingly, the denial of equal protection of the laws and the deprivation of due process occurred in the Texas court system.

The Fourteenth Court of Appeals' failure to consider the facts and law underlying Petitioners

claims against Respondent has deprived Petitioners from their right to equal protection of law and due process of law. The court of appeals concluded that Petitioners did not dispute that they agreed to tenancy-at sufferance clause contained in the deed of trust they signed. Nor have Petitioners alleged that their signatures acknowledging the terms and conditions within the loan documents were forged. The court of appeals held that Petitioners failed to challenge the tenancy-at-sufferance clause contained in the Deed of Trust therefore the question of possession and title are not intertwined and the justice court has jurisdiction over the issue of possession.

The court of appeals reversed the Petitioners' temporary injunction which enjoined Respondent from evicting Petitioners from their *home*. As a result thereof, the Respondent has filed the eviction lawsuit

in Justice Court of Harris County, Texas and trying hard to get a writ of possession to vacate the Property. While reversing the temporary injunction the majority asserts in the Opinion that neither the occupant in *Wade v. Household Finance Corporation III*, No. 06-15-00074-CV, 2016 WL 741872 (Tex. App.—Texarkana Feb. 25, 2016, no pet.) (mem. op.) **nor** Petitioners in the present case had challenged the validity of the tenancy-at-sufferance clause. However, Petitioners in the present suit, claimed the entire Note and Deed of Trust are void because of the fraud and forgery. “[A] deed that is forged is void.” *Reed v. Seidner*, 716 F. App’x 690, 691 (9th Cir. 2018). “[U]nder Texas law, a deed that is forged is void.” *Ybarra v. Wells Fargo Bank, N.A.*, 575 F. App’x 471, 473 (5th Cir. 2014).

The evidence introduced at the hearing of temporary injunction showed that there was

discrepancy in the home equity loan note between the fixed interest rate agree to and the adjustable interest rate in the document introduced at temporary injunction hearing. Appendix E, page 71a. Note and Deed of Trust intruded to obtain foreclosure judgment and at the temporary injunction hearing were not the documents that Petitioner Bruce Hiran had signed because the documents reference an adjustable interest rate of 7.975 percent and his home equity loan was for a fixed interest rate of 2.25 percent. Therefore, Note and Deed of Trust used as exhibits in the foreclosure action were void and unenforceable.

The Petitioners challenged the entirety of the Note and Deed of Trust, yet the majority conclude that the Petitioners have failed to challenge the tenancy-at-sufferance clause. The Petitioners were relied on Fourteenth Court of Appeals recent precedent in *Yarbrough, v. Household Fin. Corp. III* 455 S.W.3d

277, 283 (Tex. App.—Houston [14th Dist.] 2015, no pet.) to argue that the **intertwining of issues of title and possession deprived the justice court of jurisdiction to conduct eviction proceedings.**

Embracing the Sixth Court of Appeals' opinion in *Wade*, the majority concludes that Petitioners have not shown the issues of possession and title are intertwined because they neither dispute signing a deed of trust or dispute that the deed of trust they signed contains a tenancy-at-sufferance clause. In adopting the *Wade* rationale, the majority effectively enforces a portion of an allegedly fraudulent document, reasoning that Petitioners admit to having signed a similar document. The *Wade* court concluded that when the parties do not dispute that they signed a document creating a landlord-tenant relationship,

then the justice court has jurisdiction over the forcible-detainer action. See *id. at* *7.

The *Yarbrough* court held that when a party asserts facts that, if true, would make void the deed of trust containing the tenancy-at-sufferance clause, the issue of title is intertwined with the issue of possession. In *Yarbrough*, the occupants asserted that the deed of trust was forged, which, if true, would have made the deed of trust and its tenancy-at-sufferance clause void *ab initio*.

The Chief Justice Frost, in his concurring opinion also disagreed with the majority's reasoning of creating a landlord-tenant relationship on the basis that Petitioners failed to challenge tenancy-at-sufferance clause of a void Deed of Trust. In their opinion, the majority asserts that neither the occupant in *Wade* nor Petitioners challenged the validity of the tenancy-at-sufferance clause. **But, if**

the Note and Deed of Trust are void, as Petitioners allege, then the tenancy-at-sufferance clause is also void and there is no basis for Respondent to establish a forcible detainer. The allegation that the note and deed and trust are void due to the fraudulent acts of Long Beach Mortgage Company is also a challenge to the existence of the tenancy-at-sufferance clause contained in the Deed of Trust. The Courts below erroneously deprived Petitioners from their constitutional right to property and now the Petitioners are entirely depends upon the wisdom of this Honorable Supreme Court of the United States to **save their only home.**

Chief Justice Kem Thompson Frost clearly mentioned in his concurring opinion that “[t]he *Yarborough* court analyzed the intertwining of title and possession issue by evaluating the legal consequences of the alleged act that rendered the loan

documents void (in that case, forgery). The *Yarborough* court reasoned that the forgery allegation, if true, would render the deed of trust, including the tenancy-at sufferance clause void, so the court found the requisite entanglement of the title and possession issues.”

In analyzing this case, the majority does not explain how the issues of possession and title can be separate if both possession and title turn on the validity of the allegedly void instruments. The majority abandons *Yarborough’s* analytical framework. **The majority does not address whether the legal remedy for one harmed by the fraudulent switching of pages in the Note and Deed of Trust would be to declare the instruments void.** Neither the majority nor the Respondent cite to any case so holding. Appendix B page 59a.

Under Texas law, “[t]he court of appeals is obligated to hand down a written opinion that **“addresses every issue raised and necessary to final disposition of the appeal.”** TEX. R. APP. P. 47.1” *Tex. Disposal Sys. v. Perez*, 80 S.W.3d 593, 594 (Tex. 2002). The majority did not address these issues at the time of opinion delivered. **Accordingly, the decision should be reversed based on applicable Texas Supreme Court Case law and because this failure constitutes a denial of Petitioners of their right to equal protection of law and right to due process of law.**

As the Note and Deed of Trust are void Deutsche Bank lacked title to the Property and could not have transferred the title to Respondent at the foreclosure sale. Tenancy-at-sufferance clause of void Deed of Trust is also void. Respondent cannot enforce the tenancy-at-sufferance provision when the Note

and Deed of Trust containing any such clause is void. Therefore, the issue of title and possession are intertwined so the justice court lack jurisdiction and the court of appeals erred in reversing the trial court and denying the temporary injunction.

By erroneously relying upon *Wade* and misapplying the *Yarbrough*, the Fourteenth Court of Appeals Texas **deprived Petitioners of the property right**. This Court Should Grant Certiorari Because Texas Court of Appeals and the Texas Supreme Court deprived Petitioners' right to substantive and/or Procedural Due Process and Equal Protection of the Laws by reversing the temporary injunction as the justice court lack jurisdiction to decide the issue of possession on the bases of a tenancy-at-sufferance clause of a Deed of Trust when temporary injunction evidence sufficiently

established that entire Note and Deed of Trust were void ab initio due to the fraud and forgery.

Moreover, it is axiomatic that due process not only provides the litigants right to come to court but also provide them an opportunity to be heard in a meaningful manner. Further, an explanation is an essential part of the judicial process. E.g., Richard A. Posner, *Divergent Paths; The Academy and the Judiciary* 162 (2016) (an opinion consisting of the single word “Affirmed” is “suggestive of a miscarriage of justice”).

Petitioners filed their petition for review with the Supreme Court of Texas. The Supreme Court of Texas denied Petitioners petition. The Supreme Court of Texas did not provide any reasons or written explanation for summarily denying petitioners petition for review. Appendix F page 73a. The Supreme Court of Texas deprived Petitioners the

opportunity to be heard at a meaningful time and in a meaningful manner in violation of the Fourteenth Amendment of the US Constitution.

According to the Rule 10 of the Rules of the Supreme Court of the United States Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. Certiorari is granted only “in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.” *NLRB v Pittsburgh S.S. Co.*, 340 U.S. 498, 502, 71 S. Ct. 453, 456 (1951).

The Supreme Court of Texas’ failure to afford the litigants the opportunity to be heard in a meaningful time and meaningful manner is sufficient

consideration for granting a certiorari review. This Court should grant the petition for writ of certiorari as there was a due process violation in denying the petition for review without any explanation.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court to grant the petition for writ of certiorari and for any other relief the Court deems just and equitable.

Respectfully submitted,

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