No. 19-1281

IN THE SUPREME COURT OF THE UNITED STATES

Dimitritza H. Toromanova, *an individual, pro se*

PO Box 19153
Las Vegas, NV 89132-0153
702-467-6972

Petitioner,

v.

SUMMIT REAL ESTATE SERVICES, LLC; *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, CASE NO. 19-15312

PETITION FOR A WRIT OF CERTIORARI

I. QUESTIONS PRESENTED FOR REVIEW

Federal Rule of Civil Procedure 60(d), as amended, provides: "This rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding. . . . .(3) set aside a judgment for fraud on the court."

The questions presented for review here are:

Did the doctrine of Claim Preclusion as practiced in the Ninth Circuit preclude a party from asserting the right to file a complaint as an independent action in the United States district court for relief in the kind of independent action provided by the Federal Rules of Civil Procedure 60(d), as amended?

Did the appellate panel err by basing its final decision on Federal Rule of Civil Procedure 60(b) instead of the 2007 amended version of that Rule which created Federal Rule of Civil Procedure 60(d)?

If the court clerk invites a *pro se* party on appeal to submit a brief in the court's informal format and that *pro se* party does so, was the appellate panel justified by then basing their decision at least partly on "matters not specifically and distinctly raised and argued in the opening brief. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009),"[1] a case which did not involve an informal brief.

1 *See Appendix,* Memorandum, second page.

II. PARTIES TO THE PROCEEDING BELOW

Dimitritza H. Toromanova is the appellant below and plaintiff in the U.S. district court.

Dimitritza H. Toromanova, *an individual,* Petitioner *pro se*
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Appellees Caliber Home Loans, Inc., Summit Real Estate Services, LLC, and U.S. Bank, N.A. as Trustee for LSF9 Master Participation Trust, represented by:

MCGUIREWOODS LLP
1800 CENTURY PARK EAST, 8TH FLOOR
LOS ANGELES, CA 90067-1501
TEL. 310.315.8200

III. BASIS FOR JURISDICTION OF THIS COURT

This Petition is timely, based on the best of my understanding and belief:

1. The unpublished Memorandum decision I am appealing was filed and entered on "NOV 25 2019" (see attached true copy). By my calendar, the 90th day falls on Sunday, February 16, 2020. I rely on this court's Rules 13 and 29, which provides so long as I send it to this court's clerk "sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark. . .showing that the document was mailed on or before the last day for filing. . ."
2. There is no " order respecting rehearing," nor "any order granting an extension of time to file this petition for a writ of certiorari."

3. There is no "date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file this Petition."
4. There is no "order granting an extension of time to file this Petition."
5. There is no cross petition involved in this case.
6. The statutory provision I believe confers on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is 28 U.S.C. §2101 as well as this court's Rule 13.1.
7. The notifications required by Rule 29.4(b) or (c) has been made by mail service of a copy of this Petition on all Appellees to the appeal before the Ninth Circuit Court of Appeals, except for "MTC FINANCIAL, INC," which despite the caption was never a party to either that proceeding nor the case below.

V. WHY NO CORPORATE DISCLOSURE STATEMENT

I am an individual, not "a nongovernmental corporation shall contain a corporate disclosure statement" as "required by Rule 29.6"

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TABLE OF AUTHORITIES

V. STATEMENT OF THE CASE

A. I commenced an independent action in the United States Court for the district of Nevada court pursuant to state statute to determine adverse claims to my real property.[2]

B. The district court utterly failed to adjudicate my case on the merits.

A. The court applied the wrong legal standard as it summarily disposed of my case according to defendants' dictates.

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2 Docket #1

B. The court failed to conduct the proceeding as an independent action pursuant to state statute.

C. The assigned district court judge manifestly disregarded both the actual case facts and applicable law to a final determination which was manifestly unjust.

VI. CITATIONS OF REPORTS

To the best of my understanding of this Court's Rule 14(d), I petition this court to review the unpublished Memorandum I bring to this court (Appendix) relied on the following official reports for its Opinion. All on its page 2:

"We have jurisdiction. under 28 U.S.C. §1291. We review for an abuse of discretion, *Sch. Dist. No. JJ, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), and we affim1."

"The district court did not abuse its dliscretion by denying Toromanova's motion for relief from judgment because Toromanova failed to demonstrate any basis for such relief. See id. at 1263 (setting forth grounds for relief under Rule 60(b))."

"We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009)."

The panel used erroneous standards for its review. Perhaps or perhaps not, it cites *only* "relief under Rule 60(b))." My research revealed that Rule was amended in *2007* to add a subparagraph (d) which included independent actions and "fraud on the court."

This court has given ample guidance to lower court regarding this Rule, for example (my added emphasis is in boldface), unfortunately those courts did not follow what I see as binding precedent:

This Court's comprehensively reviewed Rule 60(b) in its 1998 decision in *United States v. Beggerly* [524 US 38], **focusing, in particular, on the independent action for relief from judgment preserved by its "savings clause."**

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"*Beggerly* held that "[i]ndependent actions must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of 'injustices which, in certain instances, are deemed sufficiently gross to demand a departure' from rigid adherence to the doctrine of res judicata." Id."

I would add here all should consider the extent to which "resj udicata" has been replaced by the preclusion doctrines, which were fiercely briefed in the district court before appealing to the Ninth Circuit Court of Appeals.

This court explained its legal standards of what it means for a court to "entertain an independent action" in *United States v. Beggerly,* 524 US 38, 46 (1998):

"**focusing, in particular, on the independent action for relief from judgment preserved by its "savings clause."**

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"*Beggerly* held that **"[i]ndependent actions must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of 'injustices which, in certain instances, are deemed sufficiently gross to demand a departure' from rigid adherence to the doctrine of res judicata."** *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238, 244 (1944).
Beggerly, 524 US at 44, gives us:

"**This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.** . .or to set aside a judgment for fraud upon the court. . .and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules **or by an independent action.**" Fed. Rule Civ. Proc. 60(b).

I would add for context, this court's decision in *Cooter & Gell v. Hartmarx 2 Corp.*, 496 U.S. 384, 405 (1990) is applicable:

> **"A court necessarily abuses its discretion if it bases its decision on an erroneous view of law or clearly erroneous factual findings."**

I submit that is exactly what the lower courts did in this case. *Cooter* also provides at 496 U.S. 405:

> "An appellate court's review of whether a legal position was reasonable are plausible enough under the circumstances is unlikely to establish clear guidelines for lower courts' nor will it clarify the underlying principles of law. See *Pierce, supra,* at 560-561."

VII CONCLUSIONS

I have no doubt this Petition can be viewed as "inartful," I rely on this court's standard "to liberally construe the "inartful pleading" of pro se litigants."[3]

Like the Sacketts, I am an interested party feeling my way through these proceedings as best as I can.[4]

Submitted for re-filing with all rights reserved on April 22nd, 2020.

Dimitritza H. Toromanova, Petitioner *pro se*

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3 *Boag v. MacDougall,* 454 U.S. 364, 365, 70 L. Ed. 2D 551, 102 S. Ct. 700 (1982)(per curiam):"It is settled law that the allegations of [a pro se litigant's complaint] 'however inartfully pleaded' are held 'to less stringent standards than formal pleadings drafted by lawyers . . . .'"

4 *Sackett v. Environmental Protection Agency,* 132 S.Ct. 1367, 1370 (2012)