No. 19-1297

In The
Supreme Court of the United States

JAMES K. COLLINS AND
TONI SHARRETTS COLLINS,

Petitioners,

v.

D.R. HORTON-TEXAS, LTD.,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Texas, Fourteenth District

PETITION FOR REHEARING

TONI L. SHARRETTS COLLINS
LAW OFFICE OF TONI L. SHARRETTS COLLINS
11054 North Hidden Oaks
Conroe, Texas 77384
(281) 827-7749 – Telephone
iceattorney@aol.com
Attorney for Petitioners

July 10, 2020

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

NEW RELATED CASE

James K. Collins, M.D. v. D.R. Horton-Texas, Ltd., No. 20-1897, District Court of the United States for the Southern District of Texas. Independent Action under Federal Rule 60(b)(4), (d)(1) and (d)(3) filed May 29, 2020 to vacate case No. 666, District Court of the United States for the Southern District of Texas.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

Pursuant to Rule 44, Petitioners request rehearing, reconsideration and redisposition of this Court's June 15, 2020 order denying the Petition for Writ of Certiorari. The grounds are 1) substantial intervening grounds not previously presented, 2) to correct application of this Court's undisputed precedent and 3) that this Court's decision denying certiorari will have unexpected adverse effects.

First, an intervening federal claim was filed that will invalidate the only basis for the state judgment on appeal in the instant case, so a conflict will exist with the decision of this Court and another federal court and the intervening claim did not exist at the time of the Petition. Second, the basis for the pending state judgment is "[a] judgment entered without notice or service [so it] is constitutionally infirm[.]" *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84 (1988), so the decision of this Court in the instant appeal is in conflict with the precedent of this Court that will be corrected by the judgment in the intervening case. Third, the federal independent action will properly void the basis for the state judgment and result in the unexpected adverse effect of two divergent federal results based on the same facts unless certiorari is granted and this case is remanded for disposition in the independent action.

BACKGROUND

In this case, land owners of a Texas land survey, the James Hodge Survey, fraudulently claimed title to an adjacent Texas land survey, the Frederick Sieberman Survey, at a 1944 federal bench trial. They lied to the federal court that all the land owners were present and that the prominent local expert's putatively concocted survey plats were legitimate, so the federal court improperly granted a judgment depriving the Sieberman owners (now Collins) of land. The Hodge owners (now Horton) never noticed, indexed or claimed the Sieberman Survey land until the Hodge owners sold the Sieberman land without warranty to Respondent Horton in 2012 as to only "Hodge" Survey land. Horton brought suit against Collins to quiet title on the Sieberman land by motion for summary judgment on claims of ancient boundary, stare decisis and estoppel relying upon the void federal judgment—none of which had merit to maintain claim against the Seiberman record title owners (now Collins). Nevertheless, the state court granted title to the Sieberman land to Horton based on the claims of the 1944 federal judgment that was obtained by fraud and without personal jurisdiction.

In the instant case, an intervening event now exists since the Petition was filed. Petitioners brought an independent action in the United States District Court for the Southern District of Texas to have the 1944 decree of the same federal court set aside and vacated. Such original federal judgment fraudulently enlarged a one-league Mexican grant of the Hodge Survey land

to usurp the Sieberman Survey land, thereby depriving the Sieberman owners (now Collins) without due process. The general grounds on which relief is sought are vacatur of the void 1944 federal decree obtained fraudulently without personal jurisdiction and subsequent consequential vacatur of the 2017 state decree that relied solely upon the void 1944 federal decree as a basis for title ownership.

The specific act of fraud which is mainly relied on to support the independent action is that after the Hodge owners had filed their 1941 complaint in the Southern District in diversity, with a statement of their Hodge claim and the documentary evidence of its validity, they became satisfied that they had no sufficient evidence of an actual grant or concession to sustain any claim to the Sieberman land to which they had not even pled. The Hodge owners and their attorneys seizing an opportunity to convert the Sieberman's land without Sieberman's knowledge, and with a view to supply this opportunity, simply instructed their "expert" land surveyor to create a false Hodge survey that included in its metes and bounds description the adjacent Sieberman Survey land without the supporting original land ground survey, patent or field notes from the Texas General Land Office or any mention or survey or even the name "Sieberman". The federal record reflects that the Hodge owners' testimony, the expert surveyor's testimony and the argument of their attorneys was false and fraudulent, so as to impose on the court the belief that the Hodge Survey included more than the original one league grant from Mexico and

also the entire 1/3rd league Sieberman Survey land that was patented and awarded to Texas Independence Goliad martyr and war hero. The Hodge owners' (now Horton) false testimony and evidence was made at trial when the Sieberman owners (now Collins) were not joined, served or noticed of the claim or the judgment; and, it is alleged that in support of this simulated, false testimony and evidence that the Hodge owners procured the testimony of perjured witnesses. Horton carried this fraud forward when Horton purchased the Sieberman land with a warrantless deed in 2012, asserted the Sieberman Survey's existence in its filed subdivision plat, then fraudulently modified its pleadings and subdivision plats to reflect the Sieberman Survey did not exist when Horton learned of Collins' record title ownership. Thus, the 1944 federal judgment is void, the 2017 state summary judgment based upon such federal judgment is void, and this Court should grant rehearing and certiorari so this case can be remanded for disposition of the independent action under Federal Rule 60 and *Peralta*.

ARGUMENT

I. The intervening circumstance of an independent action pending directly affecting the instant case is a substantial ground for rehearing.

After the Petition was filed, on May 29, 2020, Petitioners filed an independent action under Federal Rule 60(b)(4), (d)(1) and (d)(3) in the United States for the

Southern District of Texas, styled *James K. Collins, M.D. v. D.R. Horton-Texas, Ltd.*, No. 20-1897. The federal independent action is an intervening circumstance that will vacate the only ground, thus substantial ground, for the state judgment—the subject of the instant appeal. The result will be two different judicial decisions—the state court case of which this Court will have denied certiorari and the federal independent action that will result in a void judgment eliminating the basis of the state court judgment. For judicial efficacy, this Court should grant rehearing and remand for final disposition of the intervening independent action.

The purpose of new independent action is to vacate the final federal judgment entered in 1944 by the Southern District in the original lawsuit numbered 666 that such federal court entered without joinder, notice or service, so depriving the owners, without due process, of their land; this is a void federal judgment.

Res judicata does not prevent the intervening federal claim because the federal judgment to be vacated, the basis for the state judgment here on appeal, was without personal jurisdiction. RESTAT. (SECOND) OF JUDGMENTS § 20. This Court observes the "settled doctrine" that a party may obtain relief from a judgment where fraud prevents a fact from being a part of the original litigation when the fact "clearly proves it to be against conscience to execute a judgment." *Marshall v. Holmes*, 141 U.S. 589, 596-97 (1891). The absence of notice and joinder of the federal suit prevented a fair adversary trial at law, because the aggrieved party was

kept in ignorance of the proceeding and prevented from presenting his claim or defense. *United States v. Throckmorton*, 98 U.S. 61, 65 (1878).

When a court wrongfully extends its jurisdiction beyond the scope of its authority, collateral attack of its judgment is permissible and such attack is "not subject to any time limitation." *Gschwind v. Cessna Aircraft Co.*, 232 F.3d 1342, 1346 (10th Cir. 2000); FED. R. PROC. 60(b)(4) (a court may relieve a party from judgment when it is void); FED. R. PROC. 60(d)(3) (a court may set aside a judgment for fraud on the court). A trial court's inherent power over its own judgments allows it to vacate decrees to set aside void judgments or to vacate judgments procured by a fraud upon the court. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245 (1944).

Faced with evidence that all the land owners were present and putatively concocted survey plats by a prominent local surveyor, the federal court granted a judgment at the 1944 bench trial. Consequently, the federal court in the intervening independent action will properly vacate the underlying federal judgment under Rule 60 rendering a judicial dichotomy because no basis for title will exist for the instant state court action.

II. The opinion of the court below is in direct conflict with the decision of this Court and the Fourteenth Amendment but will be rectified by the intervening action.

"[A] judgment entered without notice or service is constitutionally infirm[.]" *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84 (1988). A judgment that deprives one of constitutional rights without jurisdiction over the person is not just voidable, but void. *See Pennoyer v. Neff*, 95 U.S. 714, 721 (1878) (judgment rendered against a defendant in proceeding without service or appearance is void as to that defendant). And, once void, forever void. *Id.*, at 728. The Fourteenth Amendment **does not** allow enforcement of a void federal judgment obtained without personal jurisdiction over and notice to the defendant. U.S. Const. amend. XIV, Section 1, provides, in relevant part, "[n]o state shall . . . 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."

It is undisputed that the Sieberman owners, including Collins, were never personally served with process, joined or noticed of the 1941 federal suit that resulted in the 1944 federal judgment. These contentions were not controverted at the 2016 state trial court's summary judgment hearing. This Court's holding in *Peralta* and *Pennoyer* are analogous to the controversary at bar. Specifically, an infirm judgment was unconstitutionally enforced in both *Peralta* and the instant case, so this requires correction by this Court. In the decision below, the trial court judgment deprived

Collins of their superior title to the Sieberman Survey land by enforcing a void federal judgment—one obtained without personal jurisdiction over Collins. Collins proved superior title from the sovereign into Collins and such title had superior legal boundaries as set out in the perfected GLO patent that very much still exists.

The trial court nor appellate court addressed the constitutional conflict of due process but it is now being addressed in the court of original jurisdiction by the pending intervening independent action. This Court should grant rehearing for certiorari and remand to the lower federal court to vacate the federal judgment and further disposition under *Peralta.*

III. Denying certiorari will have unexpected adverse effects on two different judicial decisions.

The Court has granted rehearing when petitioners have demonstrated that the Court's decision would have unexpected adverse effects.[1] Additionally, the Court has granted rehearing when "the Court itself, not losing counsel, has substantial doubt as to the

[1] *See* GRESSMAN ET AL., SUPREME COURT PRACTICE 816–17 (9th ed. 2007). Also, for example, arguments for several cases—including *Garcetti v. Ceballos*, 547 U.S. 410 (2006), and *Kansas v. Marsh*, 548 U.S. 163 (2006)—were heard before the Court during the time between the death of Chief Justice Rehnquist and the confirmation of Justice Alito.

correctness of what it has decided."[2] In the instant case, this court should grant rehearing of certiorari a) to prevent the adverse effect of two different judgments when the intervening independent action is disposed, b) the title dilemma that will undisputedly exist when the Southern District of Texas properly voids the 1944 judgment as a matter of law under the new independent action, c) support this Court's long-standing precedent under *Peralta*, and d) avert a blatantly unconstitutional and erroneous holding allowing Collins to be deprived of their right to hold property without due process of law. This Court's denial of certiorari as the last court of jurisdiction in the state case will only prolong the inevitable disposition that the 1944 federal judgment is void so cannot be the basis of title. No void judgment can do what the Constitution simply will not allow.

Significant continuing collateral consequences exist in this case if this Court denies certiorari because the Southern District vacatur of the 1944 judgment in the independent action will remove the only basis for the state's title award, and no judicial efficacy exists when the parties will return to this Court for the ultimate determination that this instant state court appeal will ultimately result in this Court having to take

---

[2] *Coker v. Georgia*, 433 U.S. 584, 592 (1977). The confusion that *Coker* created for *Kennedy v. Louisiana*, 554 U.S. 407 (2008) is illustrated in the way the Court in *Coker* framed the question and articulated its answer. This is relevant to this case because the underlying state decision fully conflicts with this Court's well-settled precedent in *Peralta.*

up the issue again to hold the 1944 federal judgment is void and to vacate and remand under *Peralta*.

Resolution of the questions presented is central to the outcome of this case. A grant of certiorari and reversal would be outcome-determinative to allow title to remain vested in the true record title owner from the sovereign, and, more importantly, would vindicate due process rights, while recognizing the primacy of state real property law. The decision below gives short shrift to this Court's long-standing protection of essential due process rights and the equally significant policy in favor of local control over real property, its ownership, and its regulation. While this Court is not a court of error correction but one of policy, policy itself cries out for correction of this error and to affirm the essentiality of Fourteenth Amendment rights. This is not simply about how one real property dispute was decided. It is about the deprivation of basic due process rights, enshrined in the Constitution.

CONCLUSION

Rehearing is an important device to help correct mistakes and ensure that justice is served.[3] While "[p]etitions for rehearing are generally denied unless . . . a real and significant error was made . . . ", the instant case is that real and significant error.[4] As "[f]or

[3] Hon. Richard S. Arnold, Why Judges Don't Like Petitions for Rehearing, 3 J. APP. PRAC. & PROCESS 29, 29 (2001).

[4] *Id.*

one to be bound by a judgment in a suit to which it was not a party and of which it had no notice is unconstitutional." *Auster Oil & Gas, Inc. v. Stream*, 891 F.2d 570, 581 (5th Cir. 1990); *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84 (1988). The instant state court's decision "unvoided" an infirm federal judgment to vest a stranger (Horton) to the title of Collins' Sieberman land by declaring the Sieberman land survey was usurped by the Hodge Survey—in the absence of personal jurisdiction or basis.[5] Two wrongs do not make a right.[6]

"Remove not the ancient landmark, which thy fathers have set." KJV Proverbs 22:28. The Sieberman Survey ground survey, field notes and patent in the Texas General Land Office are the original and ONLY ancient landmarks set by the founding fathers of Texas.

This Court should grant rehearing for certiorari, vacate and remand for consideration of *Peralta* and the intervening independent action to correct the state

---

[5] The federal decision is void in the absence of service and joinder of the Sieberman owners. In the absence of the Sieberman owners, the Hodge owners introduced fraudulent evidence, perjured witnesses and flagrantly misapplied Texas law.

[6] The first wrong was the 1944 federal judgment that is currently pending vacatur. The second wrong was the 2017 state court decision on summary judgment that relied upon the validity of the 1944 judgment as a basis for "extinguishing" the Sieberman Survey.

court's erroneous decision to the extent that it incorrectly abrogates constitutional rights.

PRAYER

Petitioners, James K. Collins and Toni L. Sharretts Collins, pray that the Supreme Court grant rehearing of their petition for writ of certiorari to review the judgment of the court below. In the alternative, Petitioners request this Court grant rehearing, vacate, and remand the judgment of the court below for consideration and disposition of the intervening independent action to comport with *Peralta*.

Respectfully submitted,

TONI L. SHARRETTS COLLINS
11054 North Hidden Oaks
Conroe, Texas 77384
(281) 827-7749 – Telephone
iceattorney@aol.com
Attorney for Petitioners

July 10, 2020

CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, Counsel certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Counsel certifies that this Petition is presented in good faith and not for delay.

_____

TONI SHARRETTS COLLINS

July 10, 2020