

19-5086
No. 18-2309

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

1 First Street, NE
Washington, DC 20543

FILED
JUL 04 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IRIS MCCLAIN, PRO SE,

PETITIONER

v

WELLS FARGO BANK, N.A. et al, WILLIAM SAVAGE RESPONDENTS
KRISTINE BROWN & ROBYN MCQUILLEN

On Petition for Writ of Certiorari
to
The United States Court of Appeals
For
The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourth Circuit of the United States Court of Appeals erred in affirming the District Court's Order Dismissing the Bankruptcy Fraud (Claim 1) with Prejudice.
2. Whether the Fourth Circuit of the United States Court of Appeals erred in affirming the District Court's Order Dismissing the Fraud Upon the Court (Claim 2) against the Attorney Defendants/Respondents with Prejudice.
3. Whether the Fourth Circuit of the United States Court of Appeals erred in affirming the District Court's Order Dismissing the Infliction of Emotional Stress, Mental Anguish, Embarrassment and Physical Suffering (Claim 7) with Prejudice.
4. Whether the Fourth Circuit of the United States Court of Appeals erred in affirming the District Court's Order Dismissing the Mail and Wire Fraud (Claim 8) with Prejudice.
5. Whether the Fourth Circuit of the United States Court of Appeals erred in affirming the District Court's Order Dismissing the False and Deceitful Misrepresentation (Claim 9) with Prejudice.

PARTIES

Petitioner:

Iris McClain, a resident of Prince George's County Maryland.

Respondents:

Wells Fargo Bank, N.A. and Wells Fargo Home Mortgage, a company, who services the mortgage on my property located at 209 Herrington Drive, Upper Marlboro, MD 20774 for The Bank of New York Mellon, (also a respondent).

Attorneys William Savage, Kristine Brown & Robyn McQuillen, either current or past attorneys with the Law Office of Shapiro & Brown.

APPENDIX

Order of the District Court.....	4a
Judgment of the United States Appeals Court	4b
Mandate dated May 31, 2019.....	4c
Copy of the check.....	11

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	2
PARTIES.....	3
APPENDIX	4
TABLE OF CONTENTS.....	5
TABLE OF AUTHORITIES/RULES	6
RELEVANT STATEMENT OF THE CASE	7
ARGUMENT & REASONS FOR GRANTNG THE PETITION.....	7
CONCLUSION.....	11

TABLE OF AUTHORITIES

18 U.S.C. 152, 157 and 3571.....
Kiniry v Davis, 200 Pac. 439 (Okl. 1921).....
McCoy v. Biegel, <u>305 S.W.2d 29</u> , 34, 35 (Mo.App.1957).
Mitchell v Fukuoka Daiel Hawks.....
New World Translation of the Holy Scriptures.....
Turney, 533 A.2d 916 (Md. 1987).....
United States v. Greenough.....

RULES

Supreme Court Rule 10(a).....

RELEVANT STATEMENT OF THE CASE

This Petition stems from Dismissal of the 2018 complaint and the Affirmation of that Dismissal by the Appeals Court. This petition is filed against the Defendants, Wells Fargo, et al and the Lawyer Defendants.

The Judge in the 2015 bankruptcy, dismissed the case, he said, so that I can get an attorney to refile the objection. Prior to meeting with him, I informed him that I needed him to file the objection. He verbally agreed to those terms and increased the upfront fee to \$2000.00 to cover the "extra" work he had to do filing the objection.

However, upon receipt of the proof of claim, he began to push me towards confirmation and kept making up excuses for not filing the objection. The proof of claim, on forms 410 & 410A were new to me. When I learned for the first time, the \$201.64 I paid in July 2007 as a requirement to qualify for the loan modification was used after October 1, 2007 towards fees, I considered it a revelation of fraud from its conception. When I expressed this to my attorney, he encouraged me to file a complaint against Wells Fargo, never advising me a conflict might exist.

February 14, 2017, I filed the 2017 Complaint. That Complaint was dismissed. The dismissal was upheld on appeal. I filed a Petition for Writ of Certiorari; it was DENIED.

In the interim, to preserve the statute of limitations, July 9, 2018, I filed the 2018 complaint. October 10, 2018, Judge Grimm dismissed the complaint. April 9, 2019 the Appeal Court Affirmed the dismissal. May 31, 2019 the Mandate was issued. Now I am presenting the Second Petition for Writ of Certiorari that I pray will be GRANTED for the following reasons:

ARGUMENT & REASONS FOR GRANTNG THE PETITION

A. I feel Supreme Court Rule 10(a) is applicable in this request. "In Re Turney, 533 A.2d 916 (Md. 1987) the Court of Appeals of Maryland stated, "Federal judges are guided by 28

U.S.C. § 455(a), which requires disqualification "in any proceeding in which [the judge's] impartiality might reasonably be questioned." The test generally used in the application of this standard is an objective one whether a reasonable member of the public knowing all the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned. (See, e.g., *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir.1986))"

Additionally, Judge Chuang had been assigned the bankruptcy appeal and shortly thereafter, he dismissed the bankruptcy appeal as untimely.

B. Due Process has been denied. In spite of my many filings I have not been afforded due process. I do not feel I need a hearing, but I need to know the facts and evidence is being weighed fairly. During the year (February 17, 2017 to March 8, 2018) that passed before Judge Chuang rendered his decision, more fraud and misconduct was either revealed or done. In as much as his Dismissal Opinion encompasses conduct that occurred after the case was filed, I should have been given Notice and an Opportunity to either amend my complaint or file a sur-reply. For example,

1. Bankruptcy Fraud (Claim 1): The claim is not a challenge to the Orders, as suggested, but a Federal Crime pursuant to 18 U.S.C. 152, 157 and 3571. (for clarity bankruptcy fraud is the intentional doctoring of claims, lies and perjury) Judge Chuang's Opinion, pages 14 & 15 under "Bankruptcy Fraud" is clear he Denied the Bankruptcy Fraud claim based on *lack of jurisdiction.*

Bankruptcy fraud has not been adjudicated in any court. At one hearing, I mentioned the fraud to Judge Simpson, she made it clear that was between me and Wells Fargo. That is one of the reasons I was infuriated with Judge Simpson to the point of naming her as a Defendant, because I felt she was closing her eyes to their fraud.

2. Fraud Upon the Court (Claim 2) against the attorney Defendants: Fraud opens the door for an Order or Judgment to be attacked, collaterally. The fraud upon the Court in connection with the 2015 & 2016 bankruptcies was not heard or decided. For example, I did not learn Wells Fargo's attorney and Witness lied until after the case was dismissed. I informed the bankruptcy Judge and Judge Chuang; however, no action was taken. My only recourse was to file the complaint.

3. Infliction of Emotional Stress, Mental Anguish, Embarrassment and Physical Suffering (Claim 7): Had I been allowed to bring the new events before the Court or had the bankruptcy fraud been dealt with on the merits, this claim could "proceed". Judge Chuang's Order states in reference to this claim:

"The only exception to this statute of limitations bar is McClain's claim for negligent infliction of emotional distress, which McClain bases in part on the BNYM proof of claim filed in her 2016 case. Even though this event is within the three-year statute of limitations, this claim cannot proceed because Maryland does not recognize a cause of action for negligent infliction of emotional distress. He lumped it in with "Mortgage Claims" and then said, "All of McClain's mortgage claims are therefore dismissed".

4. Mail and Wire Fraud (Claim 8): Paragraphs 90-100, 109, 111, 113 and 114 of the 2018 case deals with a continuous pattern and new instances of mail and wire fraud.
5. False and Deceitful Misrepresentation (Claim 9): paragraphs 90-94, 98-100, were not before the Court; therefore, could not be dismissed with prejudice.

C. Lack of Jurisdiction. If a court lacks jurisdiction it does not have the inherent power to dismiss the claim with prejudice. "When the court lacks subject matter jurisdiction, any action it takes is null and void." McCoy v. Biegel, 305 S.W.2d 29, 34, 35 Mo.App.1957.

D. Res Judicata burden not met by the Court. Judge Grimm raised 3 prongs to substantiate res judicata: (1) final judgment on the merits. The case of Mitchell v Fukuoka Daiel Hawks

brought out “lack of jurisdiction is not on the merits” (2) identity of cause of action the same. The issues raised in the 2017 complaint according to Judge Chuang’s Opinion and Wells Fargo “largely stem from her loan modification...the loan modification took place in 2007”. In *Kiniry v Davis*, 200 Pac. 439 (Okl. 1921) “The cause of action is the same when the evidence will support both actions; or rather the judgment in the former action will be a bar, provided the evidence necessary to sustain the judgment for the plaintiff in the present action would have authorized a judgment for him in the former”. I do not need to rely on any of the evidence of the 2017 case to substantiate the 2018 case, except for the bankruptcy fraud that claim was dismissed for lack of jurisdiction. Therefore, res judicata is not applicable in the 2018 case (3) identity of the parties are the same.

E. Administrative problems: I do not believe my complaint received the proper care and as a cover-up, because (1) The case was filed July 9, 2018. The clerk advised me that the court was responsible for serving the parties. (2) July 12, 2018 Judge Chuang issued a “Case Management Order” doc 3 8:18-cv-02084-TDC (3) October 2, 2018, more than 85 days later, Judge Grimm issued a “Letter Order Regarding the Filing Of Motions” (4) 10 days later, October 12, 2018, he dismissed the case stating in a footnote shows an internal problem as well as the Judge’s disregard for my need for fairness.,

“The Complaint included a note stating: “In the event this Complaint is forwarded to Judge [Theodore D.] Chuang, I kindly ask that he recuse himself, in all fairness to me.” Compl. 1, ECF No. 1. When, as it happens, the case was assigned to Judge Chuang, Plaintiff sent the Court a letter reiterating her wish for a recusal. Correspondence, ECF No. 4. The case was subsequently transferred for unrelated reasons.”

F. Fairness and the right to Justice as a Pro se Litigant: It is my belief that not having legal representation negatively affected me. If the Order is allowed to stand, a grave injustice would

be the result. God is a God of Justice and while men on earth are not perfect, win or lose, I should be able to feel that I was dealt with fairly and without bias.

G. Possible Conflict of Interest: I recently learned Prince George's County banks with Wells Fargo. (Exhibit A) Therefore, I may not be able to receive a fair trial in Prince George's County.

Conclusion

If this Court does not agree, this petition meets the Rule 10(a) standard, then I hope it will agree that I have provided 6 other compelling reasons why the Petition Should be GRANTED, to maintain the integrity of the judicial system is fair to all: (i) due process (ii) lack of jurisdiction is not on the merits (iii) the burden of res judicata was not met by the Court (iv) administrative error (v) Fairness and the right to Justice as a Pro se Litigant (vi) Possible Conflict of Interest. Therefore, I respectfully ask that the Petition for a Writ of Certiorari be GRANTED.

Respectfully Submitted,

Iris McClain

Certification of word count 1530 counted by Microsoft Word

CERTIFICATE OF SERVICE

I, Iris McClain, hereby certify that a copy of this Petition was mailed the 3rd day of July, 2019 via first class mail, postage paid:

Wells Fargo and Bank of New York Mellon through their Atty. Virginia Barnhart
Attorney Defendants at the law office of Shapiro & Brown