No. 19-5086

In The

Supreme Court of the United States

IRIS McCLAIN,

Petitioner,

v.

WELLS FARGO HOME MORTGAGE, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Fourth Circuit correctly affirmed the Order of the United States District Court dismissing the Complaint with prejudice finding that the Petitioner's claims against Wells Fargo and BONY were barred by res judicata and failed to state a claim for relief?

LIST OF THE PARTIES AND RULE 29.6 CORPORATE DISCLOSURES

The Petitioner is Iris McClain. The Respondents are Wells Fargo Bank, N.A., for itself and as successor to Wells Fargo Home Mortgage ("Wells Fargo"), the Bank of New York Mellon ("BONY") in its capacity as Trustee of the securitized trust which owns Petitioner's mortgage loan, and William Savage, Esq., Kristine Brown, Esq. and Robyn McQuillen, Esq., attorneys with Shapiro & Brown LLP.

This Response is submitted on behalf of Wells Fargo and BONY. Wells Fargo is a subsidiary of Wells Fargo & Company. Wells Fargo & Company is a bank holding company trading under the symbol "WFC" on the New York Stock Exchange. The Bank of New York Mellon is a subsidiary of The Bank of New York Mellon Corporation. The Bank of New York Mellon Corporation's shares are traded on the New York Stock Exchange under the symbol BK.

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STATEMENT OF THE CASE

On July 9, 2018, Ms. McClain filed in the United States District Court for the District of Maryland, a Complaint and Demand for Jury Trial (the "Second Lawsuit") against the following Defendants: (1) Wells Fargo Bank, N.A., doing business as, Wells Fargo Home Mortgage ("Wells Fargo"), (2) the Bank of New York Mellon ("BONY"), attorneys (3) William Savage, (4) Kristine Brown, and (5) Robyn McQuillen (collectively the "Attorney Defendants"), (6) Wells Fargo employee, Monica Cameron ("Ms. Cameron") and (7) the Honorable Lori Simpson, Bankruptcy Judge ("Judge Simpson"). Along with her Complaint, Ms. McClain sought leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

In granting her motion for leave to proceed *in forma pauperis,* the Honorable Paul W. Grimm considered the Complaint in her Second Lawsuit in accordance with the standards set forth in 28 U.S.C. § 1915(e)(2)(B) which mandates that "… the court shall dismiss the case at any time if the court determines that — … the action or appeal ... is frivolous or malicious; ... fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

Based on those standards, on October 12, 2018, Judge Grimm, *sua sponte*, held that the Complaint in Ms. McClain's Second Lawsuit failed to state a plausible claim for relief, and dismissed it with prejudice (the "10/12/18 Dismissal Order"). Service was never effected on Wells Fargo or BONY prior to the 10/12/18 Dismissal Order.

In so holding, the District Court considered the allegations set forth in the Complaint filed in the Second Lawsuit and determined that the allegations therein were nearly identical to those set forth in Ms. McClain's earlier lawsuit filed against these Respondents (as well as certain of the other defendants), in Case No. 17-cv-1094-TDC (the "First Lawsuit").[1]

A. The First Lawsuit

The First Lawsuit was dismissed with prejudice in large part based on the preclusive effect of Ms. McClain's prior litigation and admissions in her many bankruptcy actions, and the staleness of her claims. *McClain v. Wells Fargo Bank, N.A.*, No. CV TDC-17-1094, 2018 WL 1271231, at *2-3 (D. Md. Mar. 8, 2018), *aff'd*, 738 F. App'x 797 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 2044 (2019).

In dismissing all claims asserted in the First Lawsuit, the District Court concluded that the seven causes of action asserted by Ms. McClain in the First Lawsuit relating to her mortgage loan modification and the servicing of her mortgage loan (i.e., her claims for fraud, conspiracy to commit fraud, unjust enrichment, and violations of the TILA, RICO, PHIFA, MMFPA, MDCPA and Regulation O) all required dismissal "because they [we]re outside the applicable statutes of limitations"

[1] As in the complaint underlying this appeal, in her First Lawsuit, Ms. McClain asserted claims for (1) fraud; (2) conspiracy to commit fraud; (3) a violation of the Truth in Lending Act ("TILA"); (4) unjust enrichment; (5) negligent infliction of emotional distress; (6) violations of the Protection of Homeowners in Foreclosure Act ("PHIFA"), Md. Code Ann., Real Prop. §§ 7-301 to 7-325; the Maryland Mortgage Fraud Protection Act ("MMFPA"); and 12 C.F.R. § 1015.4(c) ("Regulation O"); (7) a violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); (8) a violation of the Fair Debt Collection Practices Act ("FDCPA"); (9) bankruptcy fraud; and (10) foreclosure fraud against the Respondents.

and failed to alleged fraud with specificity. *McClain*, 2018 WL 1271231 at *4-6. In the First Lawsuit, the District Court further held that Ms. McClain's claims regarding her 2007 loan modification and the servicing and accounting of her loan thereafter, were barred by issue preclusion, having litigated such matters to conclusion in her 2009, 2015 and 2016 Bankruptcy Cases. *McClain v. Wells Fargo Bank, N.A.*, 2018 WL 1271231 at *6-7. Finally, the District Court found that Ms. McClain's claims for negligent infliction of emotional distress and for bankruptcy and foreclosure fraud required dismissal because Maryland does not recognize a cause of action for negligent infliction of emotional distress and because the District Court lacked jurisdiction to address claims which collaterally attacked determinations made in her bankruptcy cases and in the foreclosure action. *McClain*, 2018 WL 1271231 at *6-7.

Ms. McClain appealed the dismissal of her First Lawsuit to the Fourth Circuit which issued a one paragraph *per curiam* opinion affirming the dismissal of her First Lawsuit for "the reasons stated by the district court." *McClain v. Wells Fargo Bank, N.A.*, 738 F. App'x 797, 798 (4th Cir. 2018). Ms. McClain sought certiorari review of the affirmation of the dismissal of her First lawsuit which was denied by this Honorable Court on May 13, 2019. *McClain v. Wells Fargo Bank, N.A.*, 139 S. Ct. 2044 (2019).

Undeterred, Ms. McClain filed her Second Lawsuit which was dismissed *sua sponte* by the District Court. The dismissal of the Second Lawsuit was affirmed by the Fourth Circuit, prompting the filing of her second Petition for Certiorari Review in this Court.

B. The District Court's Dismissal of the Second Lawsuit

Like the First Lawsuit, Ms. McClain's complaint in the Second Lawsuit asserted claims for bankruptcy fraud; fraud, embezzlement and theft; violations of the Fair Debt Collection Practices Act ("FDCPA"); perjury and suborning perjury; infliction of emotional stress, mental anguish, embarrassment and physical suffering; mail and wire fraud; and, false and deceitful misrepresentation.[2] Ms. McClain's claims for fraud, embezzlement and theft were based upon her oft-repeated assertion that Wells Fargo misapplied a payment of $201.64 made in connection with her Loan Modification Agreement in 2007. The remainder of her claims in the Second Lawsuit were predicated upon statements and filings made in connection matters litigated to finality in her prior bankruptcy cases.

Based on these claims, the Second Lawsuit sought damages for costs and expenses associated with Ms. McClain's repeat bankruptcy filings between 2009 and 2015, for an alleged loss of income from 2015 to the present, and for punitive damages against Wells Fargo and BONY to be determined at trial, and $13 million for alleged emotional stress and anguish. In addition, Ms. McClain sought a declaration in the Second Lawsuit (as she did in the First Lawsuit), that her mortgage loan and loan modification were defective and void.

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[2] Ms. McClain also asserted two additional counts against the Attorney Defendants and U.S. Bankruptcy Judge Simpson in her Second Lawsuit, which are not addressed herein, as her Petition does not seek review of the dismissal of her claims against Judge Simpson and the Attorney Defendants are represented by separate counsel. As such, the discussion herein is limited to those claims asserted against Wells Fargo and BONY.

As noted above, the District Court, *sua sponte*, dismissed the Complaint in the Second Lawsuit with prejudice. See the 10/12/18 Dismissal Order. Under 28 U.S.C. § 1915(e)(2), the District Court "screen[ed] her Complaint" and observed that "[t]he claims [asserted in the Second Lawsuit] ... are premised on Plaintiff's assertions that these parties filed a series of fraudulent claims in [her] prior bankruptcy proceedings." 10/12/18 Dismissal Order. The District Court also correctly noted that Ms. McClain "previously attacked the legitimacy of these same documents in her earlier suit." *Id.*

Accordingly, the District Court determined that the claims asserted against Wells Fargo and BONY were barred by *res judicata* because (1) the Wells Fargo and BONY were defendants in Ms. McClain's First Lawsuit are the same parties herein, (2) the dismissal in the First Lawsuit constituted a final judgment on the merits, and (3) applying the "transactional approach," the claims asserted in the Second Lawsuit all arose from the same transaction or series of transactions as the claims asserted in the First Lawsuit. 10/12/18 Dismissal Order in the Second Lawsuit.

C. Ms. McClain's Appeal

Ms. McClain noted an appeal of the dismissal of her Second lawsuit to the United States Court of Appeals for the Fourth Circuit on October 29, 2018.[3] On April 8, 2019, the Fourth Circuit issued a *per curiam* opinion affirming the District Court's 10/12/18 Dismissal Order stating that: "We have reviewed the record and find no

[3] Although Respondents herein were not served with the summons and complaint below, Respondents elected to appear in that appeal seeking affirmation of Judge Grimm's 10/12/18 Dismissal Order. Respondents make the same election herein.

reversible error. Accordingly, we affirm for the reasons stated by the [D]istrict [C]ourt." See *per curiam* Opinion of the Fourth Circuit dated April 8, 2019. The mandate was issued on May 31, 2019.

Ms. McClain filed a Petition for Writ of Certiorari to this Court on July 4, 2019. In her Petition, Ms. McClain again advances her unfounded belief that the District Court and the Fourth Circuit were biased against her, purportedly violated her right to due process, and failed to give consideration to her arguments even though they had previously been considered *at least once* by *four* courts. Ms. McClain's Petition continues to advance her oft-cited theory that she has been denied "fairness and the right to Justice" because she is a pro se litigant.

In seeking certiorari review of the Fourth Circuit's *per curiam* opinion affirming the District Court's Dismissal of her Second Lawsuit, Ms. McClain has not identified any basis for this Court's review, nor has she articulated any public interest or important federal question that requires this Court's consideration. The principal purpose for certiorari review "is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law," none of which have been identified in the Petition. See *Braxton v. United States*, 500 U.S. 344, 347 (1991) (citing Supreme Court Rule 10.1, now Supreme Court Rule 10(a)). Accordingly, the Petition for Writ of Certiorari should be denied.

ARGUMENT

I. Reasons For Denying The Petition

Nothing in the Petition meets the criteria set forth in Supreme Court Rule 10. The Fourth Circuit did not "[enter] a decision in conflict with the decision of another

United States court of appeals on the same important matter; ... [decide] an important federal question in a way that conflicts with a decision by a state court of last resort; or ... so far [depart] from the accepted and usual course of judicial proceedings, or [sanction] such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Supreme Court Rule 10(a). Nor did it decide "an important question of federal law that has not been, but should be, settled by this Court, or ... an important federal question in a way that conflicts with relevant decisions of this Court." Supreme Court Rule 10(c). Instead, the Fourth Circuit affirmed the well-reasoned opinion of the U.S. District Court finding that the claims asserted by Ms. McClain in the underlying Complaint were untimely, barred by issue preclusion or otherwise failed to state a plausible claim. Such claims had been previously considered *and rejected* in the First Lawsuit by the District Court, Fourth Circuit and this Court. Thus, the District Court properly dismissed the Second Lawsuit under well settled law. Nothing herein, merits this Court's extraordinary review of a routine dismissal on the basis of *res judicata* and the statute of limitations.

II. The Petitioner Has Been Afforded Ample Due Process

Ms. McClain's Petition rests upon her flawed belief that she was somehow denied due process under the Fourteenth Amendment of the U.S. Constitution when the District Court dismissed her Second Lawsuit. Specifically, Ms. McClain argues,

> 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.

Petition, p. 8, ¶ B. As reflected above, Ms. McClain has filed many pleadings, motions, appeals, and responses over the last decade. For this Court's purposes, the

only matter at issue for consideration is the Second Lawsuit and the District Court's application of *res judicata* and established law to bar the claims asserted therein.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). This Court has explained that the scope of property rights protected, and the process that is due, is "created and [its] dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972).

Ms. McClain has been afforded more than adequate due process in her numerous filings, as well as in the many other cases in which she has asserted the same or similar claims against Wells Fargo and BONY. Although she may not have been granted a hearing on her Complaint below, she indicated in her Petition that that was not necessary. Ms. McClain has received ample opportunity to be heard in writing on these issues in multiple forums. The fact that her claims were dismissed based on issue preclusion does not constitute a violation of her due process right to be heard; instead it acknowledges that she has been heard in prior cases and that her claims were previously rejected in each of those forums. As due process was repeatedly afforded Ms. McClain in her prior cases, the determination that the

decisions in those cases had a preclusive effect on reiteration of the same claims and assertions in her Second Lawsuit was proper.[4]

III. The District Court Properly Held That The Claims In The Second Lawsuit Were Barred By Res Judicata

"The general rule is well established that once a person has had a full and fair opportunity to litigate a claim, the person is precluded under the doctrine of res judicata, from relitigating it." *Duckett v. Fuller*, 819 F.3d 740, 744 (4th Cir. 2016). In order to apply the doctrine of res judicata, three elements must be demonstrated:

> (1) that "the prior judgment was final and on the merits, and rendered by a court of competent jurisdiction in accordance with the requirements of due process"; (2) that "the parties are identical, or in privity, in the two actions"; and (3) that "the claims in the second matter are based upon the same cause of action involved in the earlier proceeding"—i.e., the claims "arise out of the same transaction or series of transactions, or the same core of operative facts."

Duckett, 819 F.3d at 744 (quoting *In re Varat Enterprises, Inc.*, 81 F.3d 1310, 1315–16 (4th Cir.1996)).

A. Final Judgment on the Merits

With respect to the first element, Ms. McClain's claims against Wells Fargo and BONY were raised and rejected in her 2009 Bankruptcy Case and in the 2016 Bankruptcy Case and in the appeal thereof (Case No. 8:17-cv-3397-TDC) (D. Md.

[4] In declining to grant certiorari in the First Lawsuit, this Court has already determined that Ms. McClain was afforded adequate due process. Ms. McClain's continued arguments that she has been denied "fairness and the right to justice" because she is proceeding as a pro se litigant fails. Ms. McClain appears to believe that "fairness" and the right to be heard only occurs when her claims are deemed successful. Ms. McClain has not advanced timely claims, claims for which relief can be granted, or claims which have not already been considered and rejected by other courts.

2017), as well as in her First Lawsuit and the appeal thereof (see Appeal No. 18-1388).

Ms. McClain challenges whether there was a final decision on the merits in her First Lawsuit. In her First Lawsuit, the Fourth Circuit affirmed the District Court's finding that allegations regarding purported wrongful conduct in the bankruptcy actions were not properly raised before the District Court, but should have been asserted in the bankruptcy actions themselves. The District Court held that:

> McClain's claim for bankruptcy fraud relies on arguments she previously raised that were rejected by the bankruptcy court, such that she may not obtain relief for those claims in this case .... Because the bankruptcy court was acting within its jurisdiction when it denied McClain's motions as part of the 2016 bankruptcy case, McClain's recourse is to challenge those determinations, as she has, through her pending appeal, not to collaterally attack them through a claim of bankruptcy fraud in this lawsuit.

McClain, 2018 WL 1271231 at *7 (emphasis added). Thus, Judge Grimm dismissed Ms. McClain's claims of bankruptcy fraud in her Second Lawsuit because they had already been asserted and rejected by the Bankruptcy Court in her prior bankruptcies and by Judge Chuang in her First Lawsuit. As such rulings were preclusive, the dismissal of her Second Lawsuit was proper and based on well-settled precedent.

On pages 9 and 10 of her Petition, Ms. McClain questions whether the District Court in the First Lawsuit had jurisdiction to hear the claim for bankruptcy fraud and whether its dismissal thereof was a final judgment on the merits. Citing law from other jurisdictions, she argues that the decision her First Lawsuit cannot be given preclusive effect if the dismissal was for lack of jurisdiction. Ms. McClain fails to recognize that these same claims were also raised and rejected in her Bankruptcy

cases and in the appeal of her 2016 Bankruptcy case. Thus, as recognized by the District Court in the Second Lawsuit, issue preclusion arises from *each* case in which she has challenged her loan modification and the servicing and accounting of her loan since.

B. Identity of Parties Is Conceded

With respect to element two above, Ms. McClain concedes that the parties are the same. Petition, p. 10. As such, element two for issue preclusion is satisfied.

C. The Claims Arise Out of the Same Transaction

In her Second Complaint, Ms. McClain asserted claims arising from her 2007 Loan Modification Agreement as well as allegations of fraud with respect to filings in the her prior bankruptcies. Ms. McClain continues to challenge the veracity of the Respondents' bankruptcy filings even today, despite the fact that she lost those challenges in her bankruptcies and her prior lawsuit. In her First Lawsuit, Ms. McClain's bankruptcy fraud allegations were summarized in the following manner:

> A central part of this claim is her disagreement with the amount BONY asserted she owed on her mortgage loan, a disagreement based on her underlying contentions as to the defect in the loan modification and loan servicing. McClain made substantially similar allegations in the 2016 bankruptcy case in her Motion to Disallow BONY's claim and the Motion for Sanctions against the attorneys involved in the case. The bankruptcy court denied both motions .... McClain's claim for bankruptcy fraud relies on arguments she previously raised that were rejected by the bankruptcy court, such that she may not obtain relief for those claims in this case.

McClain v. Wells Fargo Bank, N.A., 2018 WL 1271231, at *7 (D. Md. Mar. 8, 2018). Thus, all of Ms. McClain's claims and allegations herein regarding the filings in her 2009, 2015 and 2016 Bankruptcy Cases and the allegations relating to the servicing of her loan are barred by res judicata.

In her Petition, Ms. McClain attempts to avoid *res judicata* by arguing that she does not need to rely on any of the same evidence from the First Lawsuit to "substantiate" her claims in the Second Lawsuit, except with respect to the bankruptcy fraud claim. As noted above, she wrongly contends that preclusive effect cannot be given to the First Lawsuit with respect to her bankruptcy fraud claim because the District Court in the First Lawsuit found that it lacked jurisdiction. Ms. McClain's efforts to avoid a determination that her claims in the Second Lawsuit arise out of the same transaction as in the First Lawsuit *and* her earlier bankruptcy proceedings must fail. The Complaint in the Second Lawsuit, like the Complaint in the First Lawsuit, challenged the interest rate applicable to her loan modification and the accounting of her loan. Thus, any allegations regarding the modification, servicing and accounting of her loan are barred.

Judge Grimm properly concluded that all three elements for issue preclusion were satisfied. As is evident by her prior litigation, Ms. McClain has had more than a "full and fair opportunity to litigate" her claims. Thus, her Petition seeking this Court's further review of the District Court's application of the well-settled doctrine of res judicata should be denied.

CONCLUSION

The District Court's ruling below was proper, unbiased, and anything but novel or complex. The Fourth Circuit's per curiam Opinion affirming the ruling of the District Court was well-supported by the record and precedent. Nothing in the Petition implicates any of the considerations for certiorari review set forth in

Supreme Court Rule 10. This case simply does not present a novel or pressing issue worthy of this Court's consideration. As such, Wells Fargo and BONY respectfully request that the Petition for a Writ of Certiorari be denied.

Respectfully Submitted,

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