

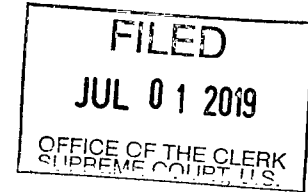
19-5106 ORIGINAL
No. 19-5106

In The Supreme Court Of The United States

JANICE A. KARELLA, Petitioner,

v.

GREEN TREE SERVICING, LLC, Respondent,



On Petition for Writ of Certiorari to The
State of Illinois Appellate Court Second District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

- I. **This case presents a substantial and important question of federal and state law: Whether a backdated document with no date can actually be a "memorialization of a prior assignment" that can be used for the entry of summary judgment?**

PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Janice A. Karella respectfully petitions for a Writ of Certiorari to The State of Illinois Appellate Court Second District Green Tree Servicing LLC v. Janice A. Karella and Eric J. Karella Case Number 2-17-0423.

OPINION BELOW

The order of The State of Illinois Appellate Court Second District affirming the summary judgment for plaintiff on its foreclosure complaint was unpublished and is attached hereto as Appendix A. The State of Illinois Appellate Court Second District Order Denying Rehearing is attached as Appendix B. The Decision of the 18th Judicial Circuit Du Page County is attached as Appendix C. The Decision of The Supreme Court of Illinois Denying Review is attached as Appendix D. The letter of the Supreme Court of the United States Office of the Clerk extending the time to file a petition for a Writ of Certiorari is attached as Appendix E.

JURISDICTION

On April 25, 2019 Application 18A1099 to extend the time to file a petition for a Writ of Certiorari from May 1, 2019 to June 30, 2019 was granted by Justice Kavanaugh. On January 31, 2019, the Supreme Court of Illinois denied the Petition for Leave to Appeal The State of Illinois Appellate Court Second District's Order filed August 22, 2018 affirming the summary judgment for plaintiff on its foreclosure complaint. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case arises under the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment provides in part, "Section 1. 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."

STATEMENT OF THE CASE

This case arises from a foreclosure case in the 18th Judicial Circuit Court of Du Page County Illinois that represents a dramatic departure from court precedents in many other jurisdictions throughout the United States. The decision is irreconcilable with case law from Federal Courts, Appeals Courts, and Supreme Courts in other states that would hold that Green Tree Servicing had not demonstrated its standing or capacity as a party entitled to enforce the note for judgment of foreclosure. The appellate court held that "BAC's attachment of copies of the mortgage and note to the complaint did not adequately demonstrate its right to foreclose in the face of defendant's showing that it was not named in the mortgage or note." It held that Green Tree's introduction of an executed copy of the assignment provided a proper alternative basis for affirming the trial court's grant of summary judgment. It

stated that "the document itself was not an assignment but, instead, it purports to memorialize a prior assignment.'

This case presents a substantial and important question of federal and state law:

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to resolve the conflicts of the decisions in courts in Illinois and throughout the United States on whether a backdated document with no date can actually be a "memorialization of a prior assignment" that can be used for the entry of summary judgment?

The publication entitled *Backdating*, by Jeffrey L. Kwall, Kathleen and Bernard Beazley Research Professor of the Loyola University Chicago, School of Law, states:

"A rich body of case law confirms the impropriety of backdating that fabricates at the expense of a third party or in violation of a law. In the most egregious cases, the backdating fabricates an event that never happened." "When a document is drafted and executed after an event occurs but accurately reflects the earlier date on which the event actually transpired, the backdating is not a fabrication. Rather, the backdated document simply memorializes the earlier event. The act of memorializing is sometimes not even regarded as backdating." Case law includes: "Berger v United States, 87 F3d 60, 61-62 (2d Cir. 1996) (involving an employee benefits attorney who filed documents indicating his clients' pension plans were amended in a timely manner where the plans were actually amended after the deadline thereby causing the affected plans to lose qualified status for some years)."

The Fannie Mae Single Family 2007 Selling Guide Part IV states that every loan delivered to Fannie Mae must be accompanied by the note

(endorsed in blank), any documents modifying the note, any applicable power of attorney, an original unrecorded assignment of the mortgage to Fannie Mae (unless the original mortgagee was MERS), and a Delivery Transmittal form.

The note in this case was not indorsed and there was no evidence when or if it had been delivered to Fannie Mae.

Many court cases throughout the United States have decided that the note cannot be enforced without admissible evidence of assignment and delivery from a holder to plaintiff. These cases include:

In re Kemp, 440 BR 624 - Bankr. Court, D. New Jersey 2010

Countrywide's claim was disallowed because the note was not properly indorsed and Bank of New York never had possession of the note.

In *Bank of NY Mellon v. Deane*, 41 Misc. 3d 494 – NY: Supreme Court 2013, Bank of New York Mellon had not established prima facie with evidence in admissible form either assignment or delivery of the note from a holder, sufficient to allow plaintiff to enforce the note and related mortgage.

In *US Bank Trust, NA v. Morales*, 2017 NY Slip Op 50218 – NY: Supreme Court, Orange 2017 there was no evidence indicating that MERS had any right to assign the Note in the mortgage document, ". . . since MERS could not transfer that which it did not hold."

In *Green v. Green Tree Servicing, LLC*, 230 So 3d 989 – Fla: Dist. Court of Appeals, 5th Dist. 2017 it states, "Here, BAC's original complaint did not

establish its holder status because it included only an unindorsed note payable to the original lender, CHL, Inc.”

Bank of America, NA v. Reyes-Toledo, 390 P. 3d 1248 – Haw: Supreme Court 2017 states, “Further, there is no additional evidence in the record regarding the date of the indorsements or whether Bank of America possessed the Note at the time of the filing of the complaint.”

In *Slorp v. Lerner, Sampson & Rothfuss*, Dist. Court, SD Ohio 2015 it states, “At issue was the question of whether a purported assignment of Plaintiff’s mortgage from Countrywide to BANA was valid. The state court awarded judgment to BANA. Plaintiff retained counsel, who questioned the assignment’s validity, and he sought to depose the LSR employee who had executed the assignment. BANA “promptly dismissed the foreclosure action, and the state court vacated its judgment.”

McDonough v. Smith, Supreme Court 2019 reaffirms a right under federal law to bring an action for damages for fabrication of evidence.

This Petition provides this Court with the opportunity to provide guidance to lower courts as to whether backdated documents that do not have a date for when the prior event allegedly occurred are a “memorialization” or a fabrication and if they can be used for summary judgment.

Equality of justice under the law has not occurred in this foreclosure case and judicial review the United States Supreme Court is necessary.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Janice A. Karella, pro se

Date: July 1, 2019