

No. 19-599

Supreme Court, U.S.
FILED

SEP 16 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SAMUEL C. MOHORNE,
Petitioner,

v.

BEAL BANK, SSB, et al.,
Respondents.

*On Petition For Writ Of Certiorari
To The Eleventh Circuit Court of Appeals*

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

1. What is the appropriate procedure when the Court uses a service of foreclosure order for one property and takes two properties in one foreclosure?
2. Whether the State Court alias writ on the Debtor's Homestead Property were unconstitutional without a foreclosure by the State Court.

PARTIES INVOLVED

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RELATED CASE

Davis v. Tyson Prepared Foods Inc., No.18-941, U.S.
Supreme Court judgement entered Oct. 17, 2018.

*Pinpoint IT Services, LLC v. Rivera (In re Atlas IT
Export Corp.)*, NO. 761 F.3d 177
1st U.S. Circuit Court. Judgement entered 2014.

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PETITION FOR A WRIT OF CERTIORARI

Samuel Mohorne petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit Court of Appeals opinion is reported at *Mohorne v. Beal Bank, et. al.*

No. 18-14776 (11th Cir.2019). The 11th Circuit's denial of petitioner's motion for reconsideration to reopen and grant automatic stay.

Mohorne v. Beal Bank, et. al.

No. 17-13534 (11th Cir.2018) vacated and remanded the case back to the District Court 02/12/2018 for further proceedings

JURISDICTION

The Jurisdiction of the Court of Appeals was entered on July 18, 2019. The jurisdiction of this Court is invoked 28 U.S.C § 158(a)(b)

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

14TH Amendment of the Constitution,
Fla.R.Civ.P.F.S 812.014 (1) (6); Rule. and Fla.
Chapter 501 Consumer Protection Law.

STATEMENT OF THE CASE

The nature of the case below involves a relief from stay being granted on the **Petitioner** (Samuel Mohorne's) **Homestead Real Property** "Post Office address" in a 2005 Bankruptcy proceeding, which followed after a 1999 and a 2002 bankruptcy where the automatic stay had not been lifted against the **Petitioner's Homestead property** legal description. Throughout the 1999 and 2002 bankruptcy proceedings the federal bankruptcy Judge Paul G. Hyman had made an earlier determination as to creditor's lien having a right to attack the non-homestead real property versus the creditors not having any claim/rights to the homestead property. Inside of the 2002 BANKRUPTCY preceding the honorable Paul G. Hyman declared his previous orders as Res Judicata on the issue. Following the case being closed, the **Respondent** ("Beal Bank") proceeded to foreclose on the **Petitioner** ("Samuel Mohorne") in State Court for the 2610 Property A/K/A to wit:

Lot 44 Less the North 10 Feet for Street ("Subject Property")

Respondent ("Beal Bank") received a final Judgment of Mortgage Foreclosure... After the **January 24**,

2005 final Judgement on the Petitioner's none homestead real property on September 8, 2005 ("Beal Bank") the Respondent were issued a writ of possession on the Petitioner's homestead P.O. Box Address.

The **Petitioner** then filed bankruptcy on September 12, 2005. On a preliminary hearing in open court on October 11, 2005 Judge Hyman was misled by the **Respondents**' attorney and granted the **Respondents** relief from stay in an **order** on October 17, 2005 without an evidentiary hearing. The order had included the **Petitioner's P.O. Box** address without the **Petitioner's legal description**, note below:

Lot 44 Less the North 10 Feet Street,
Ford's Manor, according to the Plat there of,
A/K/A 2610 N.W. 13th Street Pompano Beach, FL.
33069

A/K/A 1211 N.W. 26th Avenue Pompano Beach, FL.
33069

By surprise the City were taken by storm from Hurricane Wilma. The courthouse was closed for a few days. When it reopened the Petitioner through Counsel filed a motion for rehearing, which got misplaced for well over a year by the Clerk of Court. Then after a dialog of hearings was dismissed on the matter, later the rehearing then surfaced and was tagged as DE# 74. The **Petitioner** was denied due process on a series of **nunc pro tunc motions**, the appeal then was ensued.

REASON FOR GRANTING CERTIORARI

This case is in the interest of the people and the nation to prove; Beal Bank, Broward County Sheriff and Broward County State Attorney cannot take another person property without **Due Process of the Law!**

A. The circuits are irrevocably split on whether an order denying a request for relief from automatic stay is always final and appealable.

Two circuits recognized that a denial of motion from relief of stay, unlike an order granting relief from stay, is not always final and appealable under settled principles of finality that have long governed bankruptcy cases seven circuits have adopted a "blanket rule" which provides that orders denying motions for relief from the automatic stay are always appealable. The Eleventh Circuit **vacated and remanded the case back to the District Court** 02/12/2018 for further proceedings. This case has caused a circuit split considering the 2018 mandate vs. the 2019 mandate of the Eleventh Circuit Court of Appeals. In 2002 case number 02-27505-BKC-PGH the Bankruptcy Court Judge Paul Hyman rendered the property back to the **Petitioner** prior to the State Court Judge, taking the property without a foreclosure save only a service of a writ of possession in 2005. *See In re Lieb*, 915 F.2d at 185 n.3.

B. The Finality of Some Orders in Bankruptcy Cases Depends on Whether the Relief Sought was Granted or Denied.

Unlike an order resolving all of the issues related to a discrete claim or proceeding within a bankruptcy case, the denial of a motion to dismiss a bankruptcy case means the same thing it does in any other case: the case goes forward. Accordingly, the vast majority of courts of appeal to consider the issue have concluded that the denial of a motion to dismiss a bankruptcy case is not final.

See, e.g., Barben v. Donovan (In re Donovan), 532 F.3d 1134, 1137 (11th Cir. 2008) (recognizing that denial of motion to dismiss bankruptcy case is not final).

**COMPLAINT
PRO SE DEBTOR'S MOTION FOR THE COURT
TO TAKE JUDICIAL NOTICE**

Comes now, that this court issued an **order** to cease all actions concerning the debtors homestead

The order by John K. Olson, Judge.

- a. Still the lower court still moved upon the debtor's homestead property evicting the **debtor** and putting him in jail while this continued the hearing we're on the table moving with the Broward Sheriff's Office Beal Bank with her attorney's **moved** upon the **debtor's homestead**.

In a previous Bankruptcy proceeding Judge Paul Hyman Jr. realized the **debtor's homestead** as **Lot 44 south 152 FORDS MANOR** according to the **plat** thereof as recorded in **plat book 19 page 34 B** of the **public records of Broward County Florida, Property**

**ID NO 484233030322, a/k/a 1211 NW 26th Avenue,
Pompano Beach Florida 33069-1842**

1. The lower court would not respect that **homestead property** not respecting this court previous: order's see Amended Agreed: orders of September 2000
2. Please take judicial notice to this Court previous: orders on October 24, 2006.

**PRO SE DEBTOR/PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF IT'S
MOTION FOR SUMMARY JUDGMENT**

- ❖ It is axiomatic that legal description of a subject property is the controlling standard in resolving any ambiguities. See generally, *Miller v. Griffin*, 128 so.2d 416 (Fla. 1930)
- ❖ Supreme Court of Florida specifically holding that a legal description by section, township and range is definite and sufficient even though the county had been omitted.
- ❖ The Debtor is seeking compound motion to compel the trustee to investigate this case to see if anyone of these properties is covered by the Beal Bank legal description.
- ❖ This Court executed an order on relief from stay on the Debtor's homestead property as well as the **Debtor non- homestead property** without an investigation in this case; by neither the **trustee** nor any **administrator** of this Court. So the Debtor is seeking for this Court an order for the trustee to investigate this matter to see if the legal description used by Beal Bank predecessor covered either one of

the properties. *Maynard v. Miller*, 182 So.2d 220 (FLA.1938) *The Supreme Court of Florida has also stated the rule regarding whether how precise a legal description must be in conveying land as follows*

"[1] is well settled in this Jurisdiction that if the description of the land conveyed is such that a surveyor, by applying the rules of surveying, can locate the same, such description is sufficient, and the deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be conveyed."

This case has been previously ruled on and ordered by this Court on October 24, 2006 the debtor's attorney Elias L. Dsouza, Esq. did his best to try to help the debtor with this Court case as the debtor, got ill while fighting this case. The debtor was rearrested again and thrown in jail for the second time in this same case, causing him to be hospitalized and therefore the debtor couldn't fill him in on this matter this court have up to 10 years to follow upon this motion concerning fraud upon the court, Beal Bank through her attorneys never sought to challenge or have this order sat aside look at the record by this honorable court following this ORDER by the honorable John K Olson on October 24, 2006 Beal Bank through Broward Sheriff's Office had the debtor re arrested and thrown in jail for the second time while Judge John K. Olson order was in place. The Broward County Property Appraisers Office in 2008 discovered their mistake that there were "2" two separate properties owned by the debtor and

therefore, the Property Appraiser's Attorney under the guidance of Laura Parish placed the debtor back in his **homestead property**. The certificate of title only foreclosed on one of the debtor's properties **Department of State's Database Pursuant to F.S. 56.27(4)**

- ❖ Lot 44 Less N 10 For St & Less the South 152 Fords Manor according to the plat thereof as recorded in plat book 19 page 34 B of the public records of Broward County Florida, Property ID NO 484233030324
- ❖ Lot 44 South 152 FORDS MANOR according to the plat thereof as recorded in plat book 19 page 34 B of the public records of Broward County Florida, Property ID NO 484233030322,

Letter from Laura Parish.

At his 1211 address in Pompano Beach FL 33069 the State Court foreclosure only on one of the debtor's properties, however they only sought an alias writ for the second property without a foreclosure. Is this not a record in violation of the debtor's due process? throughout upheld by the 4th DCA without due process of the Law look at the record. The mortgage was on the debtor's none **homestead property** with one foreclosure using **Broward County Sheriff Office** to support them through this deed without a foreclosure with an alias writ on the debtors second property. Mortgage foreclosure and two writs.

Motion to set aside and strike the fraudulent transfer by Beal Bank upon debtor's homestead property

**3. Order: setting aside the fraudulent transfer by Beal Bank on the debtor's homestead property
Lot 44, the South Folio# 484233030322**

With a **pro pound order** moving this case to the Federal District Court for **Civil Theft** by the Trustee of this Court. **State Statue# 812.012-812.037 or 825.103(1) of the Florida statutes**

“Notice of Service”

Civil theft for trouble damages creditor's Beal Bank were served on March 03, 2017 their **30 days service by certified mail process.**

Judge Hyman Jr. previous order of first union and other creditors on debtors none homestead property.
TAKE JUDICIAL NOTICE

Lot 44 Less N 10 For St & Less the South 152 Fords Manor according to the plat thereof as recorded in plat book 19 page 34 B of the public records of Broward County Florida, Property ID NO 484233030324

Lot 44 South 152 FORDS MANOR according to the plat thereof as recorded in plat book 19 page 34 B of the public records of Broward County Florida, Property ID NO 484233030322,

4. The State Court ruled on what it stated the based on the debtor's intent but his does not

correlates on what Judge Paul Hyman's previous bankruptcy Court orders which was based on the debtor's **homestead property** verses the none homestead property of the debtor.

5. These actions by the State and the 4th DCA Court of appeals did not change their directions forwarding **Lot 44 Less N 10 For St & Less the South 152 Fords Manor** according to the plat thereof as recorded in plat book 19 page 34B of the public records of Broward County Florida, Property ID NO 484233030324 the State Court Judge Jeffery E. Streitfield violated the debtor's due process of Law.

PRO SE DEBTOR'S MOTION FOR SUMMARY JUDGEMENT

6. The problem with case is that the Bank's Predecessor's mortgaged the debtors **none homestead property** look at the mortgage the **Note Mortgage and certificate of title and the assignment of mortgage transcript** throughout property ID# 24 **Lot Less N 10 for St & Less the South 152 Fords Manor.**

7. Beal Bank was not the Original writers of this loan; they inherited it through an assignment of Mortgage! Alliance Funding, a division of Superior Federal Savings Bank FSB, did this loan in/on October 26, 2001. So now comes Beal Bank pulling up Old Records from the Property Appraiser Website on an old property that had been separated many years before Beal Bank's time prior to the "**Beal Bank**" of **mortgage assignment** to this loan being inherited of this loan look at the **record** this was already "2" two different parcels of lands many years

before Beal Bank's time! Look at Judge Hyman's previous orders by the property and the Property Appraisers letter. See also the judicial notice of Judge Paul Hyman's: **orders**.

8. Beal Bank pulled up old records that no longer exist anywhere. See the record the of legal description that Beal Bank used no longer exists at the time of this loan.

9. THE 4TH DCA only wanted to talk about what it's INTENT look at the record loans are not drafted on INTENT look at the 4 corners of the squares on what did the October 26, 2001 loan were made up of in the legal description used to cover the Mortgage October 26, 2001 of also view State Court transcript.

Lot 44 Less the north 10' For street Folio/Property ID# 484233030324

10. Beal Bank have now executed "2" two fraudulent transfers of title/to the debtor's homestead property which should be stricken from the debtor's homestead property by this Court.

Lot 44 South 152 of Ford's Manor

Property /ID# Folio 484233030322

On two old legal descriptions that no longer exists anywhere. Lot 44, had already been divided into "2" two different parcels of land with two different legal descriptions of lands Lot 44, south 152

Lot 44 the North 10' Street 153

The properties were divided into two halves June 5, 1996 north and south

11. Beal Bank is **Inter Alios** to the contract. Between Alliance Funding and Debtor Samuel C. Mohorne-EL therefore they did not know about the contract. Pryor to their assignment of Mortgage!

12. Debtor/Plaintiff would like to incorporate the transcripts of the State Court and expert witness Marty Waite to this motion for summary Judgement also the transcript of Judge Jeffery E. Streitfield based his ruling of intent instead of the mortgage documents see **Alias writ post foreclosure September 8, 2005.**

13. The debtor's previous Attorney in the State Court Objected the State Court ruling on intent see the State Court transcript.

14. James O Walker III stated that mortgages are not drafted off intent and could be acknowledging only what be lined between the "4" four corners of the square see line 7 page 7 see also Mr. Marty White the expert witness answer saying "No" that his legal does not correlate to the south description State Court transcript. Page 7 line 12.

15. Please view page 9 line 25 document that the mortgage were only on the vacant parcel of the debtor's none homestead property see **Exhibit 10 Mortgage and CT (Title).**

16. This Court should bring charges up against the 4th DCA's Judges along with Judge Jeffery E.

Streitfield upon the 4th Judges in this case for grounds for **Civil Theft** because this case is crystal clear of fraud had taken place!

17. **In this matter of Civil Theft.** Debtor/Plaintiff move this Court to take Judicial notice upon the State Court Judge Jeffery E. Streitfield alone with the 4th DCA Judges 3 Judges who took part in this case of Civil Theft. Judges Gunther, Klein and May J.J. Coneur did not disturb the debtors south property however they based their State Court Foreclosure on Lot 44 Less N 10 For St & Less the South 152 Fords Manor according to the plat thereof as recorded in plat book 19 page 34B of the public records of Broward County Florida, Property ID NO 484233030324 did not disturb the debtor homestead less of south property 152.

18. Along with the Attorney firms involved in this matter, of **Civil Theft**!

19. The **Debtor Plaintiff** brings the Court to view the deposition of Marty Waite and its **entirety**.

**WHERE FORE THE DEBTOR PLAINTIFF
SHOULD GET RELIEF IN THIS MATTER OF
CIVIL THEFT MY PRAYER FOR RELIEF**

Wherefore in this, the movant Mohorne-EL is seeking from this Honorable Court an order setting aside the fraudulent transfers and charging (Beal Bank SSB) with **Civil Theft** in this I remain as in my **prayer to this Court. Sussman v. Salem Saxon & Nielson, PA 153 F.R.D. 689, (M.D. FLA 1994)**

Debtor Plaintiff was granted his fourth modified Chapter 13 plan on January 8, 2010 by Judge John K Olsen United States Bankruptcy Court. *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686 (2015)

Also Defendant's Motion for entry of Judgement in State Court.

This Court has Jurisdiction over this matter.

“Memorandum of Law”

Cooper v. Aaron (1958)

Holding: States cannot nullify decisions of the federal courts.

Several government officials in southern states, including the governor and legislature of Alabama, refused to follow the Supreme Court's *Brown v. Board of Education* decision. They argued that the states could **nullify FEDERAL COURT** decisions if they felt that the federal courts were violating the Constitution. The Court unanimously **rejected** this argument and held that only the federal courts can decide when the Constitution is violated.

- Debtor plaintiff is a disabled American Veteran.
- ❖ This case violated the **Chapter 501** Consumer Protection Entire Chapter of the Debtor.
- ❖ **Section 1377 Violations involving homeowners during the course of residential foreclosure proceedings.**

Memorandum of Law in the case of *Ritzen Group, Inc. v. Jackson Masonry, LLC*, No 18-938 (Supreme Ct Oct 4, 2019)

The Jurisdiction of the Court of Appeals was entered February 12, 2018 . The jurisdiction of this Court is invoked 28 U.S.C § 158(a)(b).

Conclusion

In Conclusion, the **Petitioner** was denied due process of Law by error of the Clerk of Court misplacing the file for rehearing the Federal Bankruptcy Court obtained Jurisdiction over the **Petitioner's Homestead Property** in a 1999 Bankruptcy Case# 99-26074-PGH (chapter 13) on his Homestead Property describe as:

Lot 44 South 152, Ford's Manor, according to the Plat thereof, recorded in Plat Book 19, page 34
(**Petitioner** emphasis added in Bold)

Since that time there is no Debtor or Creditor that have made any other Jurisdictional debt or claim since thereon the **Petitioner Homestead Property**. However, there are many creditors that have drawn a claim to the **Petitioner Non-Homestead Property** listed in the description below as:

“Lot 44 less the North 10 Feet for Street, Ford's Manor, according to the Plat thereof, recorded In Plat Book 19,page 34 of the Public Records of Broward County, Florida”.

Which prevented the Petitioner from a fare right to be heard and a fair appeal on the issues that were brought before the Court for the order of the docket plays a great role in the control of the Court. (2) Secondly the issues on the case at Bar were already determined as Res Judicata by Judge Paul G. Hyman, Jr. in two previous Bankruptcy proceedings (1999 and 2002). (3) Third Beal Bank, S.S.B should not be permitted to perform Fraud upon the Court unlike any other Debtor or Creditor. The Law is the Law and Beal Bank, S.S.B should not be exempt.

Under this deferential standard, the lower court's findings of fact shall stand unless the reviewing court is left with the "deferential standard, the lower court's finding of fact shall stand unless the reviewing court is left with the "definite and firm impression that a mistake has been made," *America Nat. Bank v. Fed. Deposit Ins. Corp.*, 710 F.2d 1528, (11th Cir. 1983)

Therefore, the relief from stay on the Petitioner's Homestead P.O. Address should be stricken. (2) Because Beal Bank, S.S.B was not a Creditor. The Petitioner's at the time of their proof of claim and objections to the Petitioner's confirmation in his 2002 BANKRUPTCY proceeding, to which forced the petitioner into Foreclosure Case#03-16911. That Foreclosure on the Petitioner's real Property should be stricken at large and made unenforceable. The Petitioner should get relief on this matter of civil theft in this case.

Debtor/Plaintiff object to the tampering of the docket by the clerk of bankruptcy court in this appeal by the Bankruptcy Court.

Respectfully submitted,

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