No. 19-8171

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CAROLYN R. DAWSON, pro se

Petitioners,

v.

THE BANK OF NEW YORK, MELLON, et al,

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO
U.S.COURT OF APPEALS, FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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March 27, 2020

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QUESTIONS PRESENTED

In litigation between two parties, time-tested principles of claim preclusion and issue preclusion govern when parties may—and may not—litigate issues that were, or could have been, litigated in a prior case. This Court has held that, in a subsequent case between the same parties involving *different claims* from those litigated in the earlier case; the defendant is free to raise defenses that were not litigated in the earlier case, even though they could have been. The Federal Circuit, Eleventh Circuit, and Ninth Circuit have all held the same in recent years. Their reasoning is straightforward: *Claim preclusion* does not bar such defenses, because the claims in the second case arise from different "transactions" and occurrences from the first case, and *issue preclusion* does not bar them either, because they were never actually litigated. However, The Fifth Circuit, hold they have no authority to adjudicate for lack of

jurisdiction to hear preclusion order(s) disputes; which affects the states under their jurisdictions; the nation and public to due process under the 5th and 14th constitutional amendments of the United States. Also, as seen in U.S. Supreme Court case 18-1086; *Marcel Fashions Group, Inc. v. Lucky Brand Dungarees, Inc.*, 17-0361 (Aug. 2, 2018); case ***Appendix O.*** Other circuits have jurisdiction in these matters and the 5th Circuit Court of Appeals has erred in this important critical matter citing they lack jurisdiction to hear preclusion order; ***Appendix A.***.

The question presented is: Whether, when a plaintiff asserts new claims, federal preclusion principles can bar a defendant from raising defenses that were not actually litigated and resolved in any prior case between the parties; and whether their Fifth and Fourteenth Constitutional Rights for due process to a fair trial have been violated. Wherefore, following are extenuating

questions about the 5th Circuit judgment dated December 12, 2019 that should also be addressed and not dismissed for "lack of jurisdiction" which is incumbent on a higher court to review the matter when such an opinion is blatantly untrue and does Petitioner claims have merit.

Additional questions presented are:

(1) Whether a Temporary Restraining Order, TRO, for not more than 14 days of relief is a "lawsuit" or merely a petition for temporary relief and not a lawsuit. Because the Fifth Circuit in their judgment is agreeing with the federal court that Dawson violated and or defy her preclusion order by filing three TROs in state court as is her constitutional right. ***Appendix L & K.*** Noting how the court indicates on pg. 5, para 2; ***Appendix A;*** "a temporary restraining order, however, does not qualify as an injunction under this section.

Indeed, temporary restraining orders are generally not appealable because they are "usually effective for only very brief periods of time.....and are then generally supplanted by appealable temporary or permanent injunctions." This statement should be clear that TROs are not "lawsuits" which has been Dawson's argument from day one; and that Respondent is the one that defied a TRO issued August 06, 2018; ***Appendix K;*** and foreclosed any way in a subsequent unlawful removal to federal court in violation of 28 U.S.C. 1441(c); as described in Petitioner's brief and below.

(2) BoNYM are incorporated or deemed to be in the State of Texas with the Secretary of State, SOS, if so, then are citizens in accordance with U.S.C. § 1441(c); § 1331; § 1391; and the district court has no jurisdiction based on civil diversity and a federal

question was never raised. ROA.273-280; and seen in *Joyce Leggette v. Washington Mutual Bank, FA et. al.*, case No. 3-03-cv-02909-D. Whether on pg. 7, para 3; ***Appendix A***; "the case meets both requirements for diversity jurisdiction under 28 U.S.C. §1332;" because in accordance with 28 U.S.C. § 1331 and § 1441(c); corporations are citizens of every state wherein they are incorporated to do business and if not incorporated to conduct residential lending and/or act as "mortgagees" then Appellees have no standing; in which BoNYM is not incorporated in the State of Texas according to the Secretary of State filings that were previously submitted but rejected as exhibits because the actual document was not part of the record but submitted under ***Appendix G***. However, the SOS website is available to all.

(3) Whether the Preclusion Order dated March 05, 2014 was warranted, justified or defied based on Dawson's brief and all her pleadings, wherein the Fifth Circuit ruled in their December 12, 2019 decision, ***Appendix A, pg. 7, para2;*** "noting [d]efying this court's prelusion order" that "the district court was well within its discretion in denying Dawson leave to amend" yet they claim they lack jurisdiction as to its validity. Also, on pg. 4, para 4, indicating "Dawson's appeal from the March 05, 2014 dismissal and preclusion order is an impermissible collateral attack on a final judgment." While there still remained decisions of previous rulings which all held in accordance with this Court's precedents—that a defendant cannot be barred from asserting a defense against a new

claim unless that defense has been previously adjudicated against the defendant.

(4) Whether on page 6, para. 2; ***Appendix A***; "a successful challenge to the September 21, 2018 opinion and partial judgment would give no relief to Dawson." ***Appendix I***. This does not appear to be an accurate statement because a successful challenge would mean the court had no jurisdiction, was bias, improper action and some "relief" could have follow because a federal judge cannot order someone to vacate their property which is an aspect of the state's forcible detainer procedures regarding notices; law criteria and not of federal court jurisdiction; and to issue a partial judgment to deprive Dawson of any appeal right knowing the circuit courts do not have jurisdiction over partial judgments as described in Petitioner's brief.

Appendix G. Which was all done in error to delay and deprive Dawson of her constitutional rights simply because you can; and any relief would show the court erred then and in its final decision causing enormous emotional harm to Dawson and threatening to jail Dawson if she did not "show cause" which is all part of the record but was ultimately cancelled because of the 5th Circuit stay. In which the respondents are responsible for this entire fiasco and Petitioner's case should not be dismissed "with prejudice" which would exact some "relief".

(5) Dawson paid her bond on time out of pocket but was not require to until a final ruling at the scheduled hearing date on August 20, 2018; as discussed in her brief at ROA.121; but the hearing never transpired because of the unlawful removal

on August 20, 2018. In which the 5th Circuit claims to be confused about as stated in their December 12, 2019, decision; pg. 2, para 3. ***Appendix A***; in which the record is clear with payment receipt and emails to counsel.

(6) The court states in its December 12, 2019, decision, on pg. 2, para. 4; that Dawson "refused to vacate;" She did not refuse to vacate which makes her look bad; ***Appendix A***, she filed for a STAY with the 5th COA court which was granted on October, 15, 2018; afterward Appellees sold the property on January 22, 2019; (cited in their foot note); under false pretense which indicated there were no claims on the property in their Special Warranty Deed when this matter was pending in the 5th Circuit. Therefore, the sell was deficient as outlined in Petitioner's brief and pleadings.

LIST OF PARTIES

The undersigned Pro se of record certifies that the following listed persons and entities as described in the Circuits Local Rule 28.2.1; have an interest in the outcome of this case.

Appellant/Petitioner

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Appellee/Respondent

The Bank of New York Mellon, et al.; %Charles Townsend, SBN 24028053 and Monica Summers, SBN: 24083594; Akerman LLP; 2001 Ross Ave, Suite 3600, Dallas, TX 75201.Tel: 214-720-4300, Fax: 214-981-9339; NewRez, LLC d/b/a Shellpoint Mortgage Servicing is a wholly-owned subsidiary of Shellpoint Partner LLC, a Delaware, limited liability company. Shellpoint Partners LLC is a wholly-owned subsidiary of NRM Acquisition LLC and NRM Acquisition II LLC, Delaware limited liability companies. Both NRM Acquisition entities are wholly-owned subsidiaries of New Residential Mortgage LLC, a Delaware limited liability company. New Residential Mortgage LLC is a wholly-owned subsidiary of New Residential Investment Corporation, a Delaware corporation.

RELATED CASES

- *Lucky Brands Dungarees, Inc., Lucky Brand Dungarees Stores, Inc., Leonard Green & Partners, L.P., Lucky Brand Dungarees, LLC, Lucky Brand Dungarees Stores, LLC, Kate Spade & Co., v Marcel Fashion,* No. 18-1086, U.S. Supreme Court. (Pending/Judgment entered March 28, 2020).

- *Joyce A. Leggett, v. Washington Mutual Bank, FA, et. al,* No. 3-03-cv-02909-D, for the U.S. District Court for the Northern District of Texas, Dallas Division.

- *Wilmington Trust v. Rob,* No. 17-50115, May 21, 2018

- *Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1327 (Fed. Cir. 2008).

- *Victor O. Jones, Jr.v. Wells Fargo Bank, N.A.* No. 19-7339; U.S. Supreme Court, (regarding due process).

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment issued on December 12, 2018; by the Fifth Circuit Court of Appeals. In this case regarding a wrongful foreclosure; and preclusion order in which the court conflated these two principles and barred the petitioner from litigating defenses that had never been adjudicated, in the context of claims that had never been litigated because each case is different and should be treated as such; and is a matter of national interest and great importance and is why this body is considering the matter in the *Lucky Brands Dungarees, Inc. v. Marcel Fashions Group, Inc.*, No. 18-1086; regarding "preclusion orders." In addition to Charles Alan Wright & Arthur Miller Federal Practices & Procedures. (3rd ed. 2018).

OPINIONS BELOW

[ ] For cases from **federal courts**.

The opinion of the **United States court of appeals** appears at ***Appendix A*** to the petition and is:

[X] reported at; *John Thompson; Ivy Thompson, v. Deutsche Bank Nation Trust Company,* 5th Cir. 14-10084; *Wilmington Trust v. Rob,* Case No. 17-50115 (5th Cir. May 21, 2018); and *Marcel Fashions Group, Inc. v. Lucky Brand Dungarees, Inc.,* 17-0361 (Aug. 2, 2018), 2nd Circuit.

[X] is unpublished at; *Carolyn R. Dawson v. The Bank of New York, Mellon, et. al.;* 5th Cir. #19-20224

The opinion of the **United States district court** appears at ***Appendix B.***

[ ] For cases from **state courts**.

The opinion of **the highest state court** to review the merits appears at to the petition and is:

[X] reported at_____; or The Texas Supreme Court; *Van Dyke v. Boswell, 697 SW2d 381 (Tex. 1985.)* ***Appendix N.***

The opinion of the **United States district court** appears at to the petition and is:

[X] reported at_____; or *Joyce A. Leggette, v. Washington Mutual Bank, FA, et al*, case number 3-03-cv-02909-D, in the U.S. District Court for the Northern District of Texas, Dallas Division, in accordance with 28 U.S.C. § 1447(c);

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Fifth Circuit Court of Appeals decided this case was on December 12, 2019.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on February 28, 2020, a copy of the order denying rehearing appears at ***Appendix B & D.***.

The Fifth Circuit issued its opinion on December 12, 2019, and denied Rehearing En Banc on February 28, 2020; therefore, the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The U.S. Constitution, Article 38 (1)(c); *Res Judicata* Statutory law, U.S. Fifth and Fourteenth Amendments; due process; and U.S.C. § 1441(c); regarding removals; § 1332, § 1331 and § 1392 regarding jurisdiction.

STATEMENT OF THE CASE

A. The March 2014 Preclusion Order and August 2018 Removal.

In this wrongful foreclosure case; dated August 07, 2018; and removal from state court to federal court on August 17, 2018; in violation of U.S.C. § 1441(c) jurisdictional laws and *Joyce Leggett v. Washington Mutual Bank, FA; et al* case; to avoid a likely contempt of court for defying a court order not to foreclose from an issuance of a Temporary Restraining Order, TRO; by the court on August 06, 2018; and removal to federal court on August 20, 2018. ***Appendix K.*** Which was predicated on the March 05, 2014; "preclusion order" that was not warranted and improper which never should have transpired because Dawson's second complaint and claims in 2014 were not the same claims or issues as in her

initial 2010 suit. Therefore the district court erred; and the 5th Circuit COA opinion is they have no jurisdiction while all the other circuits have jurisdiction over preclusion orders. Moreover, the preclusion order issued on March 05, 2014; indicated that Dawson needed the court's "permission" in order to bring another lawsuit which is highly unusual and prejudicial to Dawson when most courts are competent enough to differentiate the law for themselves.

B. The 2018 District Court Dismissal with Prejudice.

In this current matter Dawson did seek the court's permission on September 13, 2018; and was told in an inappropriate "management order" dated September 13, 2018; ***Appendix J;*** before the scheduled hearing date on September 21, 2018; and before all the facts were

addressed or disputed; in accordance with Fed. R. Civ. P Rule 15(b); that her potential wrongful foreclosure lawsuit is denied for defying the March 05, 2014 preclusion order and was frivolous; which is clear the court based its dismissal on his preclusion order and not the facts. Because a wrongful foreclosure case is not frivolous; and should not be denied in an improper management order as explained in Petitioner's brief. All because Dawson supposedly defied the March 05, 2014 preclusion order by filing three Temporary Restraining Order; TROs (one in the same) in defense for actions brought against her in state court on three consecutive different dates. Dawson was not the initiator in these actions but a respondent and petitioned the court for TRO(s) which are not lawsuits as so stipulated and opinioned by the 5th Circuit COA judgment; ***Appendix A,*** on December 12, 2019; pg. 5, para. 2; "Indeed, temporary restraining orders are

generally not appealable because they are "usually effective for only very brief periods of time....and are then generally supplanted by appealable temporary or permanent injunctions."" This ruling by COA and others makes it clear that Temporary Restraining Orders, TRO are not lawsuits but are petitions for temporary relief, not to exceed 14 days; if a defendant can show the court that state law viable defective violations existed in which the records and transcripts from the district court will show that an "improper acceleration" occurred stated in the transcript by the court which was also in violation of the 5th Circuit's decision in the *Wilmington Trust v. Rob*, case No. 17-50115, May 21, 2018. ***Appendix Q.*** Plus there were no federal questions raised; and Dawson did not initiate lawsuit(s) but responded to actions brought against her in violation of the law in which she did not act in bad faith. Therefore, Dawson's appeal and/or any subsequent

possible wrongful suit should be heard and not dismissed "with" prejudice because she has suffered irreparable harmed because of the erroneous actions by the court and Respondent.

Moreover, Petitioner's first suit in 2010; ended in a Settlement Agreement and the her second suit in 2014 incurred the issuance of the Preclusion Order, dated March 05, 2014; in which the second suit had different claims and issues from the 2010 suit; the first suit was about a breach of Petitioner's Deed of Trust, DOT; and a clear violation of her tax withholding waiver; in accordance with RESPA and the State of Texas. The 2014 action was about an illegal and breached modification as well explained and documented in Petitioner's brief; as she did not have a modification in 2010, and the preclusion order issued in 2014 should have never transpired because Petitioner has a constitutional right to

defend herself and property; as such "permission" should have been granted. Plus the 2010 presiding Judge Hoyt indicated if there was a future problem with the case to come back to his court in which it ultimately did in 2014; before the preclusion ordered was issued but dismissed with prejudice; and not precluded; in which the district court counts as part of "four" lawsuits Dawson supposedly defied which is not true. Moreover, as stated above the 2010 action resulted in a settlement, and was never officially adjudicated or litigated on the merits but perhaps deemed as adjudicated on the merits which may require further investigation. However, during such settlement none of the same issues or claims existed such as notices of sell or wrongful foreclosure as outlined in Petitioner's brief.

Regarding state removed cases; In *John Thompson; Ivy Thompson, Plaintiffs – Appellants v. Deutsche Bank Nation Trust Company,* 5th Cir. 14-10084:

> "Id. § 1446(b)(1). Additionally, a defendant may remove a case that is not initially removable within 30 days of receipt through service of a copy of the pleading indicating that the case has become removable. Id. § 1446(b)(3). Finally, Congress established an additional limitation in cases where removal is based on diversity of citizenship under 28 U.S.C. § 1332, as such actions may not be removed "more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action." Id. § 1446(c)."
>
> "Where the federal district courts have original jurisdiction over a civil action in state court that is not based on a federal claim (i.e., the court's subject matter jurisdiction is based on diversity of citizenship), the action is removable to federal district court only if none of the defendants is a citizen of the state in which the action was brought. Of course, the defendants must be properly joined and served. Where the federal district courts have original jurisdiction over a civil action in state court because the action arises under federal law (i.e.,

> the court's subject matter jurisdiction is based on federal question jurisdiction), the case is removable, regardless of the citizenship or residence of the parties involved."

Therefore, (no federal questions sought) if so; may be removed; and defendants are both citizens because they are incorporated in the State of Texas in accordance with 28 U.S.C. 1441(c); and 28 U.S.C. § 1391(c)(2); if not then Respondent has no standing; to conduct residential lending and/or modifications. However, under § 1391(c)(2) a corporation is deemed a citizen in conjunction with 28 U.S.C. 1441(c) allowing no jurisdiction to the federal district court regarding diversity; and Petitioner did not raise a federal question. Therefore, the case should have been remanded for resolution and not dismissed with prejudice. This is why foreclosure proceedings should remain in state if no federal question is raised and not allowed to be whitewashed in federal court. Because it is clear from the court's "Amended Final

Judgment" on April 05, 2019; ***Appendix F;*** that a judge presiding in a foreclosure hearing (or hearing) is supposed to list some finding for their dismissal of the case that has undergone a hearing proceeding; Fed. R. Civ. P. Rule 52(a)(1); as opposed to simply dismissing the case with prejudice period; which risk being overturned on appeal and is why the court's management order dated September 13, 2018; was improper and issued before the hearing date on September 21, 2018. All because the Respondent requested the court to amend its final judgment, which is not based on the merits; ***Appendix F & J;*** and no doubt facilitated the management order dated September 13, 2018; because the court does whatever banks requests them to do even put to Dawson in jail in a show cause motion while Dawson cannot be heard in any court for supposedly lack of jurisdiction.

Because the Dawson family has worked too hard for their money and property to let whitewashing, unsavory and erroneous conduct steals it all away in which the courts are supposed to protect its citizens from such abuse; and Dawson would in no wise bring a frivolous lawsuit with all its aggrievement, cost, and time in which she does not have to waste when she fairly understands the law and abide by it when others do not.

REASONS FOR GRANTING THE PETITION

Because these errors; offenses and improprieties perpetrated by the lower courts affects the country as a whole by violating citizen's rights' to due process under the law and constitution; and is grounds for granting such petition. Three circuits have held that defendants are not precluded from raising defenses in a second case between the parties merely because they could have been litigated in the first case, but were not. The decision of the 5th

Circuit held it has no jurisdiction over preclusion orders, ***Appendix A***, pg. 5; para. 1; issued by the federal district court which is not only inconsistent with those circuits, but also irreconcilable with this Court's previous case rulings, in bedrock principles of res judicata, and most recently this Court's case no. 18-1086; (pending decision) as well as with the Federal Rules of Civil Procedure. Therefore, this Court should grant the petition, reverse the Fifth Circuit and District court judgments, and restore stability in this important area of law that is so important this Court agreed to hear the *Lucky Brands Dungarees, Inc., Lucky Brand Dungarees Stores, Inc., Leonard Green & Partners, L.P., Lucky Brand Dungarees, LLC, Lucky Brand Dungarees Stores, LLC, Kate Spade & Co., v Marcel Fashion,* Supreme Court case No. 18-1086, No. 17-0361; and other similar cases in the past; but more important to this case is whether Dawson and her case

are worthy enough to be heard in which each case is different in that Dawson was required to ascertain the "permission" of the court which should have been granted because of the nature and gravity of the situation. Also, the Fifth Circuit's approach is fundamentally inconsistent with the decisions and reasoning of other circuits. These courts all hold—in accordance with this Court's precedents—that a defendant cannot be barred from asserting a defense against a new claim unless that defense has been previously adjudicated against the defendant, in which case issue preclusion would apply. In addition, the preclusion order is the premise why Petitioner is not allowed to proceed in her wrongful foreclosure case and her Petition should be granted.

(A) The Decision creates a Circuit Split

In the Federal Circuit, "the plaintiff and defendant" are "treated equally" when it comes "to res judicata."

Nasalok Coating Corp. v. Nylok Corp., 522 F.3d 1320, 1327 (Fed. Cir. 2008). Although, Petitioner's is not as educated as most attorneys she does have common sense; knowledgeable of the law and the ability to know right from wrong. Therefore, jurisprudence is essential in this very important matter in which this body is considering the validly of "preclusion orders" in the *Lucky* case. In addition, all the Dawson's family life-long personal property, tangible and non- tangible assets have all been illegally confiscated when Respondents unlawfully sold her property to a non bona fide purchaser as discussed in Dawson v. Pakenham No. 19-DCV-064653, Fort Bend County in which Shellpoint Mortgage presented the obsolete HUD-1 Settlement Statement as of 2015; as proof of sell in violation of 18 U.S.C. § 1010 and § 1018; ***Appendix Q;*** because of Respondent's total disregard for the rule of law and outright documented falsehood(s) that

there were no claims against the property at the time of sell while this case was still pending in the 5th Circuit Court in an attempt to avoid any risk or later prosecution. Also, property is hard to come by for the Black population who ultimately receives no representation or justice. Not to mention having caused a family's life long possessions of everything they have accumulated and owned over the past half century confiscated including necessary medical supplies and equipment; pets; pictures, life's treasures, etc., while having to start life with absolutely nothing but the clothes on their back; homeless and from scratch is not right or American and if allowed to get away with violating one's constitutional right and laws of the land would be a travesty for our nation when the State of Texas and the Fifth Circuit are known to be favorable toward the banks and businesses because they can do no

wrong while the average citizen does not stand a chance to be heard let alone obtain justice.

(B) The District Court and Fifth Circuit Erroneous Dismissals.

In addition; Dawson filed a Motion for Judicial Review on January 18, 2020; ***Appendix E;*** outlining the most important issues presented in her brief and petition for rehearing en banc that were overlooked as indicated in the COA's decision; and the motion was denied January 27, 2020; ***Appendix C.*** Petitioner is of the opinion and belief that both courts have erred to her peril. Because each case is different and should be treated as such when most foreclosure cases do not involve a clear violation of a Temporary Restraining Order, TRO not to foreclose before the facts are heard. However, everything Respondent does is not in compliance with law and no one should be above the law.

Therefore, Dawson hereby incorporates all the relevant cases cited in the U.S. Supreme Court case; No. 18-1086; *Lucky Brands Dungarees, Inc., Lucky Brand Dungarees Stores, Inc., Leonard Green & Partners, L.P., Lucky Brand Dungarees, LLC, Lucky Brand Dungarees Stores, LLC, Kate Spade & Co., v Marcel Fashion,* 17-0361, docketed February 21, 2019; ***Appendix P.***

CONCLUSION

The petition for a writ of certiorari should be granted in the interest of fairness and justice in that the entire record is more detailed if required. However, this Court is already reviewing the validity of the most important and primary issue regarding Petitioner's case which is the "preclusion order" dated March 05, 2014; and pray this Court will assess the Fifth Circuit claim that it lack jurisdiction at the least which is not complicated and

perhaps simply remand the case back because the COA does have jurisdiction or whatever it deems appropriate.

Respectfully submitted,

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