No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE: ANDREA GENRETTE,

PETITIONER

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted:

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QUESTION(S) PRESENTED

(i) Was it manifest error for the Third Circuit Court of Appeals to affirm the lower court's denial of Petitioner's Petition for Rehearing, which in effect, affirmed the Bankruptcy Court's order lifting an automatic stay?

LIST OF PARTIES

Petitioner submits that all parties appear in the caption of the case on the cover page, and are listed below for the Court's reference:

Petitioner: Andrea Genrette

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is found at *In Re: Andrea Genrette*, Third Circuit COA, dated March 17, 2020. Non-Precedential Opinion.

JURISDICTION

The date on which the highest state court decided the merits of the case was March 17, 2020. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), which provides: "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods...by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

STATEMENT OF THE CASE

Petitioner filed her Voluntary Petition under Chapter 13 of the Bankruptcy Code on August 19, 2015. (hereinafter referred to as the "Bankruptcy Action"). All requisite schedules and a proposed Chapter 13 Plan were filed on September 1, 2015. Amended schedules/statements were filed on September 2, 2015, December 16, 2015, and July 17, 2016. Amended Chapter 13 Plans were filed on September 25, 2015 and October 21, 2015. A Final Confirmation Hearing was held on October 26, 2015. Thereafter, a motion to modify confirmed plan was filed and subsequently granted. As of the date of this petition, the Bankruptcy Action remains pending.

On or about June 7, 2018, the Bankruptcy Court entered a Lift Stay Order, which (i) denied Petitioner's motion to reinstate the automatic stay, and (ii) granted alleged creditor Bank of New York Mellon ("BONY")'s relief from the automatic stay on the basis that Petitioner failed to make the required post-petition payments under the Stipulated Order ("Stipulation"). Although a Stipulation was entered on October 3, 2017, a completely different Stipulation was presented to the Court by Petitioner's prior Counsel in or around January 2018. This second Stipulation was never executed by Petitioner, nor was it entered by the Court.

On June 21, 2018, Petitioner timely appealed the Lift Stay Order to the United States District Court for the District of Delaware. However, during the pendency of the appeal, Petitioner was approved by Ocwen, the loan servicer, for a three-month trial loan modification. Petitioner met the terms of the three-month trial period (May - July 2018), and consequently began making payments toward the Modification presented that began in August through November 2018. All payments were

accepted by Ocwen. However, when the Court was requested to enter an order approving a permanent loan modification, Petitioner objected, believing the terms and conditions of the proposed modification was inequitable, and subsequently filed a separate appeal of the Loan Modification Order. As a result of the Petitioner's objection, the permanent loan modification was reversed, and BONY reverted the mortgage loan back to 'default' status in error.

At the heart of Petitioner's underlying petition for rehearing were the following central facts and misapplications of current law: (i) that the Stipulation was not voluntarily entered into by Petitioner as Petitioner submits that her then-counsel, Vivian A. Houghton, wrongfully electronically signed Petitioner's name on the Stipulation without Petitioner's knowledge and/or consent; (ii) that the District Court overlooked a significant change in the law which requires a 'party in interest' to produce not only the original Note and Mortgage in order to assert an interest in property, but produce a properly endorsed note; and (iii) BONY lacked any standing to assert an interest in the property within the bankruptcy based on the fact that the relied upon Assignment, presented on October 1, 2015, is void as a matter of law since BONY allegedly obtained an interest in the mortgage over two years prior to the filing and recording of the relied upon Assignment. These facts required the grant of rehearing by the District Court.

Petitioner timely appealed the Order. Via Memorandum and Opinion dated February 7, 2019, the District Court affirmed the Bankruptcy Court's Lift Stay Order. *See Appendix "C."* It is undisputed that Petitioner timely appealed the Lift Stay Order. Petitioner physically received the Memorandum and Opinion the next day,

February 8, 2019. Subsequently, on February 22, 2019, Petitioner filed her Petition for Rehearing En Banc. The same day that Petitioner's petition was filed and accepted by the Court, the Court requested that BONY respond. BONY filed its Opposition to Petition for Rehearing En Banc on March 6, 2019. Petitioner subsequently replied. On September 27, 2019, the District Court denied the petition. *See Appendix "B."* A timely Notice of Appeal to the Third Circuit Court of Appeal was filed on or about October 11, 2019. After full briefing by Petitioner and BONY, the Third Circuit issued its Opinion affirming the District Court's denial of the petition for rehearing on March 17, 2020. *See Appendix "A."*

REASONS FOR GRANTING THE PETITION

It was manifest error for the Third Circuit Court of Appeals to affirm the lower court's denial of Petitioner's Petition for Rehearing, in part, based on a Stipulation which was never duly executed by Petitioner.

The District Court's decision and Third Circuit's affirmance constitutes manifest error. "'Manifest error' is one that 'is plain and indisputable, and that amounts to a complete disregard of the controlling law.'" *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004) (quoting *Venegas-Hernandez v. Sonolux Records*, 370 F.3d 183, 195 (1st Cir. 2004)); See *Black's Law Dictionary* 563 (7th ed.1999). Other authorities have defined manifest error as "an error that is obvious and indisputable, that warrants reversal on appeal. It is an indisputable error of judgment in complete disregard of the facts of the case, the applicable rule or law and credible evidence." *See uslegal.com.*

The Third Circuit reasoned in its affirmance of the District Court order that the District Court did not abuse its discretion for two main reasons. One, the Third Circuit disregarded the argument that Petitioner did not execute the relied upon Stipulation. In fact, in the Opinion, the Third Circuit stated: "...Genrette stipulated that Bank of New York would be entitled to this relief if she failed to make certain payments." *See Appendix A, page 3.* Secondly, the Third Circuit states: "...Bank of New York possess the note, which has been indorsed to it." *See Appendix A, page 4.* Both of these propositions are patently erroneous as Petitioner has respectfully submitted in her appellate briefings.

As to the first erroneous reasoning of the Third Circuit, what the District

Court, and subsequently the Third Circuit Court of Appeals, overlooked is that Petitioner never voluntarily executed the Stipulation. The Stipulation was wrongfully and erroneously executed by Petitioner's prior counsel. The Stipulation was executed by Petitioner's prior Counsel without Petitioner's knowledge and/or consent, thus rendering any reliance on the Stipulation misguided as a matter of law. In fact, prior Counsel was ordered by the Bar Association Dispute Committee ("BADC") to return Petitioner's paid fees because of her reckless conduct. The BADC found prior Counsel in error. Petitioner has raised this issue time and again – to the Bankruptcy Court, to the District Court, and to the Third Circuit Court of Appeals.

It is well established controlling law that "an attorney has to have an express authority to settle a client's claims." *Covington v. Continental General Tire, Inc.*, 381 F. 3d 216 - Court of Appeals, 3rd Circuit 2004. Here, Petitioner's prior counsel never had any inherent or express authority to execute the Stipulation without Petitioner's knowledge and/or consent. It is equally well settled that an attorney does not possess the inherent authority to compromise by virtue of his retention for litigation alone. See *Luis C. Forteza e Hijos, Inc. v. Mills*, 534 F.2d 415, 418 (1st Cir.1976); *Associates Discount Corporation*, 524 F.2d at 1053; *Blanton*, 38 Cal.3d at 404, 212 Cal.Rptr. at 155, 696 P.2d at 650; Annot., 30 A.L.R.2d 944, 945. A number of authorities support the proposition, however, that a client may clothe his attorney with the apparent authority to settle through the client's representations to the opposing party. See *Bergstrom v. Sears, Roebuck & Co.*, 532 F.Supp. 923, 933 (D.Minn.1982); Annot., 30 A.L.R.2d 944, 951; Spiegel, Lawyering and Client Decisionmaking: Informed Consent and the Legal Profession, 128 U.Pa.L.Rev. 41, 54-57 (1979). The Restatement

provides, again with certain exceptions not relevant here, that apparent authority may be created "as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him." Restatement (Second) of Agency § 27. Without the authority to enter into the Stipulation, Petitioner should not be held to its terms and conditions. Rehearing en Banc was thus warranted to examine the issue of the validity of the Stipulation which the Court relied upon in affirming the Lift Stay Order. The Third Circuit Court of Appeals erred by not remanding this case back to the lower court.

The Third Circuit cites to *Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262. 275 (3d Cir. 2002) for supporting its position that Petitioner has "reconsidered that stipulation." Apparently, the Court seemed to believe that Petitioner had entered into the Stipulation of her own free will and is just now 'regretting' her decision to get into the Stipulation. This is not the case and is not supported by the record. Had the Court undertaken a plenary review of the underlying Stipulation, it would have clearly found that the Stipulation was not executed by the Petitioner. Plenary review by the Third Circuit was required. "The court applies plenary review to a district court's construction of settlement agreements, but should review a district court's interpretation of settlement agreements, as well as any underlying factual findings, for clear error, as it would in reviewing a district court's treatment of any other contract." See, e.g., *In re Cendant Corp. Prides Litig.*, 233 F.3d 188, 193 (3d Cir.2000) ("[B]asic contract principles ... apply to settlement agreements [and] ... contract interpretation is a question of fact, [thus] ... review is according to the clearly

erroneous standard. In contrast, contract construction, that is, the legal operation of the contract, is a question of law **mandating plenary review**.") (emphasis added).

Petitioner never received this plenary review in violation of her constitutional right to due process at law. Petitioner has consistently put forth facts, evidence and argument to demonstrate the fallacy of BONY's reliance on this Stipulation. Thus far, the lower courts have not provided a fair and equitable review of the Stipulation.

Although a Stipulation was entered within the Bankruptcy Action on October 3, 2017, a completely separate Stipulation was presented to the Court by Petitioner's prior Counsel in or around January 2018. This second Stipulation was never executed by Petitioner. A modified plan was filed pursuant to the Stipulation, providing for post-petition mortgage payments to be paid to Ocwen. A post-petition Proof of Claim wasn't filed, and thus no disbursements were made to Ocwen, because their claim was disallowed previously in the Bankruptcy Action. In fact, the Bankruptcy Court determined early in the bankruptcy case that BONY's claim was unsecured and disallowed. BONY was duly notified by the Chapter 13 Trustee of this determination. It is worth noting that BONY never filed any objection to the determined status of its claim. On the record at oral hearing subsequent to the entry of the above-referenced Stipulation, the Bankruptcy Court, *sua sponte*, converted BONY's claim from unsecured and disallowed to secured. The Bankruptcy Court even went further by directing BONY to do whatever it felt was necessary to "secure and protect its interest in the Estate." The Bankruptcy Court provided no legal authority for its decision to convert BONY's claim status. As noted previously, BONY's claim had already been determined to be unsecured and disallowed. BONY

never objected to this determination through the course of the bankruptcy. Thus, BONY was bound by this determination.

Accordingly, the District Court and Third Circuit Court of Appeals overlooked the vital fact that the second Stipulation was never properly executed.

As to the second manifest error of law committed by the Third Circuit, BONY never had legal standing to assert an interest in the subject property, contrary to the findings of the lower courts. Standing was erroneously given to BONY by the Bankruptcy Court, in spite of the fact that BONY filed an untimely and erroneous Proof of Claim.

It is undisputed that BONY filed an untimely Proof of Claim. Additionally, BONY never filed for leave of court for an extension of time to file their proof of claim under the Federal Rules of Bankruptcy Procedure. Thus, as a procedural matter, BONY's Proof of Claim should have been stricken from the record and not considered by the Bankruptcy Court. The District Court and Third Circuit manifestly erred when it found no procedural error in BONY's untimely Proof of Claim filing.

It is well established that in analyzing the parties' respective burdens in connection with the adjudication of an objection to a proof of claim, bankruptcy courts must consider three (3) sources of law: the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and, of course, applicable case law. "The basic legal principles governing the allowance and disallowance of proofs of claim are well established." *In re Henry*, 546 BR 633 - Bankr. Court, ED Pennsylvania 2016.

Section 502(a) of the Bankruptcy Code provides that a proof of claim "is deemed allowed, unless a party in interest ... objects." 11 U.S.C. § 502(a). In the face of an

objection to a proof of claim, the Third Circuit Court of Appeals has held that if the proof of claim alleges facts sufficient to support the legal liability asserted, the claimant's initial obligation to go forward is satisfied, i.e., the proof of claim itself makes out a prima facie case. The burden of production then shifts to the objector to offer evidence sufficient to negate the prima facie validity of the filed claim. *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir.1992). In a claim's objection contested matter in which a proof of claim is prima facie valid and the objector meets its burden of production, the ultimate burden of proof remains with the claimant. See *Allegheny Int'l*, 954 F.2d at 174; *In re Gimelson*, 2004 WL 2713059, at *13 (E.D.Pa. Nov. 23, 2004); *In re Galloway*, 220 B.R. 236, 244 (Bankr.E.D.Pa.1998). Thus, once the objector has presented evidence, the claimant may then need to offer additional evidence to carry its burden of persuasion. See *U.S. (I.R.S.) v. Baskin & Sears, P.C.*, 207 B.R. 84, 86 (E.D.Pa.1997) ("[a]s in non-bankruptcy law, bankruptcy claimants seeking damages must prove their entitlement"). Here, Petitioner proffered evidence that BONY's Proof of Claim was erroneous and invalid. Instead of reviewing and considering the objector's evidence in a fair and reasonable manner, the Bankruptcy Court completely disregarded same and went as far as to convert BONY's claim from unsecured and disallowed to secured and allowed, contrary to relevant statutory caselaw, a manifest error which requires this Court's full and complete review.

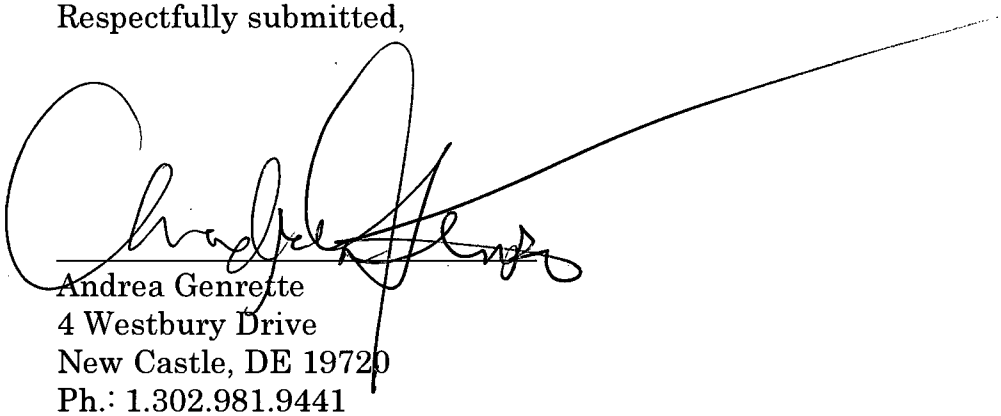
Accordingly, the petition for Writ of Certiorari should be granted.

CONCLUSION

For the reasons herein, the petition for writ of certiorari should be granted.

Dated: May 14th, 2020.

Respectfully submitted,



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