

BEFORE THE UNITED STATES SUPREME COURT

IN THE MATTER OF
STEVEN ROBERT LISSE,
Debtor

Seventh Circuit of Appeals Nos.
18-1866 and 18-1889

APPEALS OF
WENDY ALISON NORA

Steven Robert Lisse,
Debtor-Appellant

Originating Case Number:
United States District Court
for the Western District of Wisconsin
3:16-cv-00617-wmc

v.

HSBC Bank USA, National Association
for the Benefit of ACE Securities Corp.
Home Equity Loan Trust, Series 2006-NC3,
Asset Backed Pass-Through Certificates,¹
Claimant-Appellee

MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI UNDER
28 U.S.C. SEC. 1254(a) AND SUPREME COURT RULE 13.3
FROM AUGUST 1, 2019 TO SEPTEMBER 2, 2019

TO: The Honorable Elena Kagan
Circuit Justice for the Seventh Circuit
1 First Street, NE
Washington, DC 20543

JURISDICTIONAL STATEMENT

Wendy Alison Nora ("Movant") intends to file a Petition for Writ of Certiorari to the Seventh Circuit Court of Appeals under 28 U.S.C. sec. 1254(a) and Supreme Court Rule 13.3. This Motion is brought pursuant to Rules 21 and 22 of the Rules

¹ The true identity of the Respondent is Select Portfolio Servicing, Inc. ("SPS").

of the United States Supreme Court. Movant seeks an extension of time to file the Petition for Writ of Certiorari (the “Petition”) from August 1, 2019 to September 2, 2018 under Rule 13.5 of the Rules of the United States Supreme Court for good cause shown.

Movant’s intended Petition for Writ of Certiorari arises from the appeal to the United States District Court for the Western District of Wisconsin (“District Court”) from the *sua sponte* dismissal of the Chapter 13 Petition of Steven Robert Lisse (“Mr. Lisse) in the United States Bankruptcy Court for the Western District of Wisconsin (“Bankruptcy Court”). The Petition for Writ of Certiorari will seek to have this Court review the April 1, 2019 Decision of the Seventh Circuit Court of Appeals and entered by the Judgment on that same date.

The actual Respondent is Select Portfolio Servicing, Inc. (SPS). The attorney representing SPS finally admitted by Declaration filed on April 15, 2019 that he was representing SPS while proceeding in the name of HSBC Bank USA, National Association for the Benefit of ACE Securities Corp. Home Equity Loan Trust, Series 2006-NC3, Asset Backed Pass-Through Certificates (attached Exhibit A).

Movant’s Petition for Panel Rehearing or Rehearing En Banc was filed effective April 15, 2019. Movant’s Petition for Panel Rehearing or Rehearing En Banc was denied on May 3, 2019 (Exhibit B) and Mandate was issued on May 13, 2019 (attached Exhibit C). The deadline for Movant to file her Petition for Writ of Certiorari under 28 U.S.C. sec. 1254(a) and Supreme Court Rule 13.3 is August 1, 2010.

GROUNDS FOR THE PETITION

Movant's Petition is of great significance to her, her former clients as well as homeowners and former homeowners throughout the nation² who are seeking judicial redress of their grievances arising from the use of fabricated evidence in judicial and nonjudicial foreclosure proceedings. Over a million forged documents have admittedly been filed in public land records by just one third party document preparation vendor known as DOCX (Exhibit D). DOCX was a subsidiary of the former Lender Processing Services, Inc. (LPS), next known as Black Knight Financial, LLC and now known as ServiceLink, LLC. LPS entered into an agreement with the Federal Reserve Board (FRB), Office of the Comptroller of Currency (OCC), and the FDIC attached hereto as Exhibit E³.

The issues for which Movant seeks review involve a monetary sanction and discipline imposed on her as punishment for her efforts to expose the use of a forged document purporting to be the original Note in the United States Bankruptcy Court for the Western District of Wisconsin (Bankruptcy Court), contrary to *Bordenkircher v. Hayes*, 434 U.S. 357, 363, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978) which holds, "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort."

² For over a decade, the identity of the party entitled to the remedy of foreclosure has been a mystery in countless judicial and nonjudicial foreclosure cases. The CEO of just one third party document preparation vendor, DOCX, admitted that over a million false documents have been filed in the public land records (Exhibit D).

³ The April 13, 2011 Consent Order was modified on January 17, 2017.

Movant filed a mandatory report under 18 U.S.C. sec. 4 on her own behalf along with Mr. Lisse and the forensic document examiner, based on their personal knowledge of bankruptcy fraud, a federal felony in violation of 18 U.S.C. secs. 152 and 157. Movant urged the Chief Judge of the United States District Court for the Western District of Wisconsin (the District Court) to report the federal bankruptcy crime to the United States Attorney under 18 U.S.C. sec. 3057(a). The Mandatory Report under 18 U.S.C. sec. 4 was filed by the Movant, Mr. Lisse and the forensic document examiner. The forensic document examiner concluded that the purported original Note presented to the Bankruptcy Court was a forgery beyond “any reasonable doubt.”

THE PROCEEDINGS BELOW

A. Mr. Lisse’s Appeal from the Sua Sponte Dismissal of his Chapter 13 Petition

Movant sought to establish that SPS, proceeding in the pretended name of HSBC Bank USA, National Association for the Benefit of ACE Securities Corp. Home Equity Loan Trust, Series 2006-NC3, Asset Backed Pass-Through Certificates, lacked standing to obtain relief in Mr. Lisse’s Chapter 13 proceedings because the basis for its claimed right to relief is a forged document. Movant then sought summary reversal of the Bankruptcy Court’s *sua sponte* order dismissing Mr. Lisse’s Chapter 13 Petition based on the lack of standing of SPS because its standing to seek relief was based on the claim of possession of the original Note,

which was found to be a forgery “beyond any reasonable doubt”.⁴

Movant was assisting her client in exercising his First Amendment Petition Rights in an effort to protect his Homestead against the violation of his Due Process Rights not to have his property taken based on fabricated evidence. In addition, Movant, Mr. Lisse and the document examiner had a positive duty to report felony bankruptcy fraud of which they had personal knowledge or they would be guilty of misprision of a felony under 18 U.S.C. sec. 4. It is Movant’s duty as an officer of the Court to report bankruptcy fraud.

B. Movant’s Intervening Injury

Unfortunately, while Movant’s Motion for Summary Reversal of the (*sua sponte*) Dismissal was pending in the appeal from the Bankruptcy Court case to the District Court under 28 U.S.C. sec. 158(a)(1), on January 17, 2017 Movant slipped on ice, fell and hit her head, which resulted in post-concussion syndrome, also known as mild traumatic brain injury (mTBI). While Movant was trying to manage her practice within her medical limitations, the District Court took no action on the Motion for Summary Reversal and counsel for SPS attempted to have Mr. Lisse’s appeal dismissed for failure to timely file his appellate brief on the merits while the Motion for Summary Reversal was pending. When Movant’s treating neurologist directed Movant to take a medical leave, the District Court entered a briefing schedule on the merits of the appeal.

⁴ The expert opinion of the forensic document examiner has not been challenged or rebutted in any way.

Because Movant was attempting to recover from mTBI, she referred Mr. Lisse and his spouse, Sondra Kay Lisse⁵ (“Ms. Lisse”) to another attorney for representation in state court proceedings, after the automatic stay was lifted in Ms. Lisse’s separate Chapter 13 proceedings and Ms. Lisse voluntarily dismissed her Chapter 13 Petition so that the Lisses, jointly, could proceed to defend their Homestead in state court. At the recommendation of the Lisses’ state court attorney, Mr. Lisse chose to dismiss the appeal to the District Court and he directed Movant not to file the Opening Brief, which Movant had been prepared and which would have been timely filed.

C. The District Court’s Order to Show Cause

When the appeal to the District Court was dismissed even through

D. Movant’s Appeal to the Seventh Circuit Court of Appeals

Movant’s appeal to the Seventh Circuit Court of Appeals

GROUND FOR THE EXTENSION

A. On June 20, 2019, this Court decided *McDonough v. Smith*, No. 18-485, which has implications in bankruptcy cases in which fabricated evidence is produced.

The June 20, 2019 decision in *McDonough v. Smith*, supra, announces the principle that it is a Due Process violation for a prosecutor to use fabricated evidence in criminal proceedings. Movant will urge this court to grant her Petition for Writ of Certiorari to expand the Due Process protection to civil proceedings. The requested extension will allow Movant to include the principles of *McDonough* into

⁵ Ms. Lisse filed her individual Chapter 13 Chapter 13 Petition following the Bankruptcy Court’s *sua sponte* dismissal of Mr. Lisse’s Petition and was paying all arrearages to the Chapter 13 Trustee and the current mortgage payments to Movant’s Trust Account pending a determination of the real party in interest entitled to receive the benefit of the payments.

her Petition for Writ of Certiorari.

B. The preparation of the Petition for Writ of Certiorari involves the review of voluminous documentary record, including events which occurred during the time that Movant was injured, in order to prepare the Appendix allowed under Supreme Court Rule 14.1(i)(vi).

It has taken Movant longer to review the voluminous documentary record because she was suffering from mTBI when the proceedings upon which the District Court's Order to Show Cause were based occurred.

C. Portions of the voluminous record which are necessary to an understanding of the issues under Supreme Court Rule 14.1(i)(vi) must be excerpted and formatted to be included in the Appendix in order to comply with Supreme Court Rule 33.1.

The issues in this case for which review is sought are complex due to the extent of the legal errors and the scope of the procedural errors. The Appendix materials which are necessary to an understanding of the issues for review and which are not her original filings cannot easily be re-formatted and additional time is needed.

Additionally, the expert report of the forensic document examiner contains images of forged document which should be produced in the form allowed for the production of patents under Supreme Court Rule 33.1(c) and the electronic image of the forged document filed in the District Court should be produced in the same manner. A motion to permit production of the separate Appendix under Supreme Court Rule 33.1(c) will be filed with the Petition for Writ of Certiorari.

D. The extension is also requested to enable the Movant to visit her 91 year old father and step-mother at the time of a medical concern.

Movant has been informed that her 91 year old father has been diagnosed

with a relapse of cancer and is having surgery on August 1, 2019. She has arranged to travel to Denver, Colorado in order to visit with him and her step-mother on July 27, 2019 to August 3, 2019, while also attending a meeting of dozens of concerned citizens who are seeking relief from judicial and nonjudicial foreclosures proceedings based on forged documents recorded in the public land records and in court actions.

E. The Petition will raise meritorious issues.

The questions for review by this Court and a brief statement of the legal authority in support of the Petition are

1. Whether an attorney may be sanctioned and disciplined for reporting the use of a forged document in bankruptcy proceedings.

In *Bordenkircher v. Haynes*, 434 U.S. 357, 363, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978) the United States Supreme Court held, “To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort . . . and for an agent of the State to pursue a course of action whose objective is to penalize a person’s reliance on his legal rights is “patently unconstitutional.”

2. Whether the *Rooker-Feldman* doctrine, claim preclusion or issue preclusion prevent a federal court exercising its original, exclusive powers in bankruptcy cases to set aside a state court judgment procured by the production of a forged document as the basis for the judgment.

There is a split of authority in the circuits. *Gruntz v. County of Los Angeles*, (In re Gruntz), 202 F.3d 1074 (9th Cir., 2000) and *Sun Valley Foods, Inc. v. Detroit Marine Terminals, Inc.*, (In re Sun Valley Foods Co.), 801 F.2d 186, 189 (6th Cir., 1986) are contrary to the position taken by the Seventh Circuit in punishing Movant.

Moreover, the Seventh Circuit’s opinion is contrary to the authority of *Pepper v. Litton*, 308 U.S. 295, 60 S.Ct. 238, 84 L.Ed. 281 (1939); *Heiser v. Woodruff*, 327 U.S. 726, 66 S.Ct. 853, 90 L.Ed. 970 (1946); *Vanston Bondholders Protection Committee, Keystone Driller*, 290 U.S. 240, 244-245,

54 S.Ct. 146, 78 L.Ed. 293 (1933); and *Marshall v. Holmes*, 141 U.S. 589, 12 S.Ct. 62, 35 L.Ed. 870 (1891).

Finally, it has long been established that a federal court in its original jurisdiction has the authority to grant relief from a state court judgment procured by the use of a forged document the prevailing party. *Marshall v. Holmes*, supra. Bankruptcy cases are in the original, exclusive jurisdiction of the federal courts under Article One, Section 8, Clause 4.

3. Whether it is a violation of Due Process Rights for a state or federal court to allow a party to benefit from a judgment procured by production of a forged document as evidence of the proponent of the forged document's claimed right to relief.

The Seventh Circuit

4. Whether the Seventh Circuit decided an issue on appeal from which no appeal was taken and was without jurisdiction to decide the issue.

Movant never appealed from the portion of the District Court's order which imposed reciprocal discipline upon her because she had not exercised her opportunity to seek relief from the Chief Judge of the District Court under Local Rule 1.E and did not appeal from that portion of the April 13, 2018 Order.

C. The importance of the issues

Movant is not only actually innocent of any misconduct in the District Court case, but the party responsible for producing the forged document is being rewarded, while Movant is being subjected to a monetary sanction and professional discipline for attempting to expose the production of a forged document as the basis for SPS to claim the right to relief in bankruptcy proceedings in order to oppose Mr. Lisse's appeal. The Petition for Writ of Certiorari provides this Court with the opportunity to address the ubiquitous violations of Due Process Rights arising from the use of forged documents in bankruptcy proceedings which involve civil

foreclosure cases which has become standard practice in the mortgage servicing industry which continues unabated to this day.

REASONS FOR GRANTING THE EXTENSION

A. Movant's Petition will raise important issues for review.

Movant seeks to have this Court consider granting the Writ of Certiorari to provide direction to both state and federal courts which have been refusing to consider allegations that documentary evidence being produced in foreclosure cases is forged. Last month, this Court decided *McDonough v. Smith*, No. 18-485, June 20, 2019 which reiterated the well-established principle that it is a denial of Due Process guaranteed by the Fifth Amendment and Fourteenth Amendments to the *United States Constitution* for a prosecutor to use false evidence in a criminal proceeding or to allow it to stand uncorrected when the use of false evidence comes to the prosecutor's attention. *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).

The requested extension will allow Movant's Petition to be prepared and filed. If the Court believes that the Petition should be granted to address the denial of Due Process Rights by forged evidence in civil proceedings, it will have the opportunity to do so in this case. Moreover, the issue of punishing an attorney for doing what the law requires should be addressed by this Court because some attorneys are being punished or threatened with punishment for raising the issues of foreclosure fraud and countless others are being intimidated into silence.

B. If the extension is not granted, Movant will lose her opportunity to have her Petition considered by the Court, but the opposing party will not suffer any loss if the extension is granted.

The requested extension of thirty (30) days to file the Petition is reasonable in view of the significance of the issues and this Court's recent decision in *McDonough v. Smith*, supra. If the extension is not granted, Movant will lose her right to file her Petition which is terminal.

If the extension of thirty (30) days (plus the weekend of August 31-September 1, 2019) is granted, the opposing party not suffer any harm. Movant is informed and believes that the opposing party is in the process of or has taken possession of her client's home based on the forged document purporting to be the original Note because the Wisconsin Court of Appeals held that the evidence Movant obtained in the Bankruptcy Court proceedings should have been discovered in prior state court proceedings in which the Lisses were either pro se or represented by other attorneys. Because of Movant's head injury, she was unable to represent the Lisses in the state trial court proceedings subsequent to the discovery of the evidence in Bankruptcy Court, but the failure of the Lisses' appeal from the denial of the Lisses' Motion to Vacate the foreclosure judgment brought by other state court counsel based on the uncontroverted expert report that the original Note upon which the state court relied in granting summary judgment supports the need for this Court to apply the principles of *McDonough v. Smith* to civil proceedings and announce that it is a violation of Due Process to use forged documents in both criminal and civil proceedings.

CONCLUSION

The Circuit Justice is asked to exercise her discretion to allow Movant to file her Petition on or before September 2, 2019 for good cause shown above.

Dated at Madison, Wisconsin this 26th day of July, 2019.

Respectfully submitted,

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of and at the direction of qualified attorneys in
all U.S. states, except the State of Wisconsin

UNSWORN DECLARATION OF UNDER PENALTY OF PERJURY

Wendy Alison Nora declares, under penalty of perjury of the laws of the United States of America, pursuant to 28 U.S.C. sec. 1746, that the facts set forth above are true of her own personal knowledge, except where stated upon information or belief and where stated upon information or belief, she believes those statements to be true. She further states that the Exhibits attached hereto are true and correct copies of what they purport to be.

AN IMAGE OF THE SIGNATURE BELOW SHALL HAVE THE SAME FORCE AND EFFECT AS THE ORIGINAL



Wendy Alison Nora