

19A130 BEFORE THE UNITED STATES SUPREME COURT

ORIGINAL

IN THE MATTER OF
STEVEN ROBERT LISSE,
Debtor

APPEALS OF
WENDY ALISON NORA

Steven Robert Lisse,
Debtor-Appellant

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

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

Supreme Court, U.S.
FILED

AUG 23 2018

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

SECOND

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 SEPTEMBER 2, 2019 TO SEPTEMBER 24, 2019

TO: The Honorable Brett Kavanaugh
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

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

Court Rule 13.3.

This Motion is brought pursuant to Rules 21 and 22 of the Rules of the United States Supreme Court. Movant seeks an extension of time to file the Petition for Writ of Certiorari (the “Petition”) from September 2, 2019 (effective September 3, 2019 by operation of law due to the Labor Day Holiday) to September 24, 2019 under Rule 13.5 of the Rules of the United States Supreme Court for good cause shown.

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 attached hereto as Exhibit 1 and entered by the Judgment on that same date (attached Exhibit 2). 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 3).

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 (attached hereto as Exhibit 4) and Mandate was issued on May 13, 2019 (attached Exhibit 5). 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 was August 1, 2010, but was extended by the Court to September 2, 2019.

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. 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."

On October 5, 2016, Movant filed a mandatory report under 18 U.S.C. sec. 4 on her own behalf, on behalf Mr. Lisse and the document examiner, based on their personal knowledge of bankruptcy fraud, a federal felony in violation of 18 U.S.C. secs. 152(4) and 157(2). The Mandatory Report filed under 18 U.S.C. sec. 4 required the Chief Judge of the United States District Court for the Western District of Wisconsin (the District Court) to report probable cause to believe that federal bankruptcy crimes had been committed to the United States Attorney under 18

² For over a decade, the identity of the parties 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 6).

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 who concluded that the purported original Note was a forgery beyond “any reasonable doubt.” See attached Exhibit 7 (ECF No. 2 through 2-5 in WIWD Case No. 16-cv-617³).

Movant sought to establish that Wells Fargo Bank, N.A. (Wells Fargo), as master servicer, acting through Select Portfolio Servicing, Inc. (SPS) as “subservicer”, proceeded in 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 to obtain relief in the Chapter 13 proceedings of Steven Robert Lisse (“Mr. Lisse”) on the basis of possession of a forged document purporting to be the original Note, upon which the claim for payment was being made (Exhibit 7, Exhibit B, Proof of Claim No. 2 in WIWB Case No. 16-10395, Part XX, Bates-stamped pages XX-XX). 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,

³ Exhibit C to Exhibit 7 (the Designation of Record filed by the purported creditor designates the copy of the June 28, 2005 Note in the record on appeal) and is highlighted for emphasis. Pages 11, 16, 17, 1, 19, 20, 21, 38, and 46 of Exhibit D to Exhibit 7 (the Transcript of the July 18, 2016 Hearing in the United States Bankruptcy Court for the Western District of Wisconsin) have been highlighted to demonstrate that the forged instrument purporting to be the original Note was uttered by counsel for the purported creditor at the July 18, 2016 Hearing.

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

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 6; United States of America v. Lorraine Brown, Middle District of Florida, Case No. 3:12-CR-198-J-25-MCR, page 19). DOCX was a subsidiary of the former Lender Processing Services, Inc. (LPS). LPS and DOCX entered into a Consent Order (subsequently identified as Order # 2011-053) with the Federal Reserve Board (FRB), Office of the Comptroller of Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) on April 13, 2011 attached hereto as Exhibit 8. LPS was next known as Black Knight Financial, LLC and is now known as ServiceLink, Holdings, LLC (ServiceLink). ServiceLink entered into a Consent Order (Order # 2017-004) with the FRB, OCC, and FDIC on January 23/24, 2017 which reiterated some of the provisions of Order # 2011-053 and modified other provisions of Order # 2011-053 (Exhibit 9).

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, but Movant, Mr. Lisse and the document examiner also 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 was Movant’s duty as a citizen as

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

well as an officer of the Court to report bankruptcy fraud.

Unfortunately, while briefs were pending on the appeal from the Bankruptcy Court case to the District Court under 28 U.S.C. sec. 158(a), Movant fell and hit her head, which resulted in post-concussion syndrome, also known as mild traumatic brain injury (mTBI), for which she sought the equivalent of accommodations under the Americans with Disabilities Act as amended effective January 1, 2009 (the ADAA⁵). Movant's injury resulted in the request for an extension of time to file Mr. Lisse's Opening Brief and referral to other counsel.

Other counsel recommended that the Opening Brief, which had been prepared and was pending filing, not be filed and that the appeal be dismissed so that Mr. Lisse could continue in the state court proceedings only. Movant concurred with the filing of the Notice of Dismissal which referred to the discovery of new evidence in the bankruptcy proceedings. The District Court entered an Order to Show Cause to Movant only, not to both counsel for Mr. Lisse, calling the truthful statement that new evidence had been discovered since the entry of the Foreclosure Judgment was entered in the State Court foreclosure action "disingenuous". It is undisputed that the reference to discovery of new evidence referred to the evidence that the document produced at the July 18, 2016 Chapter 13 Confirmation Hearing was a forgery, based on the forensic examination of the document produced in the

⁵ The Seventh Circuit punished Movant for requesting the equivalent of ADAA accommodations, which was a lawful act. Punishment for engaging in lawful conduct is a due process violation of the most basic sort. *Bordenkircher v. Hayes*, 434 U.S. at 363.

Bankruptcy Court and the Expert Report completed on September 15, 2016. See Exhibit A attached to the October 5, 2016 Mandatory Report under 18 U.S.C. sec. 4 which is attached hereto as Exhibit 7.

GROUNDS FOR THE EXTENSION

A. Movant requires additional time to prepare the Petition for Writ of Certiorari due to its importance.

Movant has been punished for reporting bankruptcy fraud in violation of 18 U.S.C. secs. 152(2) and 157(2) as required by 18 U.S.C. sec. 4, contrary to *Bordenkircher v. Hayes*, 434 U.S. at 363.⁶

B. 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. Hayes*, 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

⁶ Strangely, she has also been punished for seeking ADAA accommodations after having suffered from motor vehicle accident injuries which appears to be a distraction from the real issue before the Court, which is the uttering of a forged document in bankruptcy proceedings by opposing counsel in violation of 18 U.S.C. secs. 152(4) and 157(2).

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 of the *United States Constitution*.

3. 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.

The lengthy discussion of reciprocal discipline, from which **Movant did not appeal** is another distraction, like the ADAA issue (footnote 2, above), which conceals the real issue before the Seventh Circuit Court of Appeals: whether an attorney can be punished for reporting bankruptcy crimes. The issue of reciprocal discipline was not before the Seventh Circuit Court of Appeals. Only the discipline arising from Movant's conduct in the opposing relief being granted to the proponent of a forged document was involved in the appeal.

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.

The Petition for Writ of Certiorari is Movant's opportunity to be present the ubiquitous and ongoing issue of the use of forged documents in civil proceedings involving foreclosure of homes throughout the nation and to establish that the Rooker-Feldman doctrine does not prevent federal courts from granting equitable relief from state court judgments procured with forged documents.

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. In the course of preparing the Petition for Writ of Certiorari, it was determined that a transcript of the January 14, 2019 Oral Argument before the Seventh Circuit Court of Appeals is necessary to demonstrate the position of the proponent of the forged document and the efforts of the Seventh Circuit Court of Appeals to avoid addressing the forgery issue.

Movant recalls that counsel for the proponent of the forged document (now known to be SPS) argued that the punishment imposed on the Movant should be affirmed or she "will not stop" [trying to expose the use of forged documents as evidence in judicial proceedings]. Upon realizing that the simplest and most straight-forward source of the forgery proponent's position, affirmed by the Seventh Circuit (as opposed to the voluminous documentary record), is the statement made

at Oral Argument, Movant immediately ordered the Transcript which is expected to be prepared and available no later than September 10, 2019. Movant needs two (2) weeks thereafter to complete her preparation of the Petition for Writ of Certiorari.

The Transcript of the January 14, 2019 Oral Argument will demonstrate the unfortunate efforts undertaken by Seventh Circuit Court of Appeals to avoid confronting the issue of bankruptcy crimes being committed by the use of forged documents to establish creditors' standing to seek relief and claim rights to payment from bankruptcy estates.

C. 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 an additional twenty-two (22) 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 the additional twenty-two (22) days⁷ 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

⁷ In actuality, the extension requested will amount to twenty-one (21) days, disregarding the Labor Day Holiday which is excluded by operation of law.

proceedings in which her client was either pro se or represented by other attorneys. Because of Movant's head injury, she was unable to represent her client in the state court proceedings subsequent to the discovery of the evidence in Bankruptcy Court.

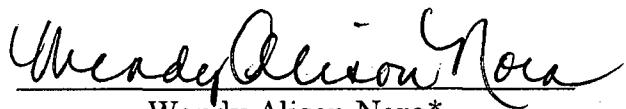
CONCLUSION

The Circuit Justice is asked to exercise his discretion to allow Movant to file her Petition on or before September 24, 2019 for good cause shown above.

Dated at Madison, Wisconsin this 23rd day of August, 2019.

Respectfully submitted,

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



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