20-1317 ORIGINAL

No. _____

THE SUPREME COURT OF THE UNITED STATES

HOLLY MACINTYRE
Petitioner,

v.

JP MORGAN CHASE BANK, N.A.,
Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. Whether a plaintiff in a diversity case who seeks monetary relief — for damages emanating from the defendant's fraud in procuring a state-court judgment — thereby triggers application of the *Rooker-Feldman* doctrine because he is "necessarily" seeking federal review and rejection of the judgment itself, despite the fact the requested relief would leave the judgment in full force and effect.

2. Whether a federal court, which would have been sitting in diversity if not for a federal jurisdictional doctrine inapplicable in the state judiciary, may nonetheless invoke the state's fee-shifting statute to award attorneys' fees against the federal plaintiff, and may do so admittedly without ever having had subject matter jurisdiction.

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Petitioner, Holly MacIntyre, respectfully seeks a writ of certiorari to review the Order and Judgment of the United States Court of Appeals for the Tenth Circuit.

IV. OPINIONS BELOW

The Order and Judgment of the Tenth Circuit affirming the United States District Court for the District of Colorado is unpublished, was issued on September 10, 2020, and is attached as Appendix A. The District Court's Order dismissing the case is attached as Appendix B. The Order Granting Attorneys' Fees is Appendix C. The Order Denying Rehearing on Fees is Appendix D.

V. JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Order and Judgment of the Tenth Circuit, for which review is sought, was issued on September 10, 2020. The Tenth Circuit then extended the time to file a Petition for Rehearing, which was timely filed, but denied on October 19, 2020. One hundred fifty days thereafter, this Petition for a Writ of Certiorari is being timely filed on March 18, 2021, pursuant to the Supreme Court's Order of March 19, 2020, 589 U.S. ___ (2020).

VI. STATEMENT OF THE CASE

On January 18, 2019, in the United States District Court for the District of Colorado, MacIntyre filed a diversity Complaint against JP Morgan Chase Bank ("Chase") asserting causes of action under Colorado law. She specifically alleged that Chase had used falsified legal instruments in winning a state-court judgment of judicial foreclosure against her four years earlier. In 2016, while the appeal of that judgment was pending in the Colorado Court of Appeals, her residential real estate had been sold, as ordered by the trial court. Ignoring the sale, which had actually mooted the appeal, the Colorado Court of Appeals nonetheless affirmed the judgment. MacIntyre then sought certiorari review in the Supreme Court of Colorado, which, in January 2017, granted her Suggestion of Mootness and dismissed the case.

Because Chase had successfully opposed all of her attempts to stay the foreclosure sale, and the state courts had refused to grant a stay on any terms, the mootness of her appeal had been involuntarily inflicted. That meant the Colorado Court of Appeals had a "duty" to "reverse or vacate the judgment below and remand with a direction to dismiss." *Van Schaack Holdings* v. *Fulenwider*, 798 P.2d 424, 427 (Colo. 1990), quoting *United States* v. *Munsingwear*, 340 U.S. 36, 39-40 (1950). In the event the state appellate court declined to perform this "duty", MacIntyre would then be compelled to seek an "exception" to the preclusive effect of the

unvacated judgment. *In re Otasco*, 18 F.3d 841, 844 (10th Cir. 1994). Anticipating state-court aversion to this "duty", she filed the aforementioned federal Complaint against Chase and made it expressly contingent upon the outcome of a forthcoming judgment-vacation request in the state courts. If that request was granted, she informed the federal court, she would not require federal relief. If it was denied, then she *would* require it: an exception to the preclusive effect of the unvacated judgment and, once that was obtained, monetary damages for fraud.

All of this planning went awry. Before a motion to vacate had been filed in the Colorado Court of Appeals, Chase—which had not yet been served with the Complaint—discovered it on PACER, entered an appearance, decreed an unsought and alleged "waiver" to service, and filed a motion to dismiss for lack of subject matter jurisdiction due to the *Rooker-Feldman* doctrine. When the motion to vacate was finally filed, the Colorado Court of Appeals promptly denied it on April 11, 2019. Refusing to await the outcome of a rule to show cause in the Colorado Supreme Court (on which the Complaint was expressly contingent), the federal District Court dismissed the case on *Rooker-Feldman* grounds. MacIntyre's Rule 59(e) motion to alter or amend judgment was denied—with one minor exception not relevant here—on July 17, 2019.

While MacIntyre's appeal (No. 19-1290) was pending in the Tenth Circuit, Chase sought attorneys' fees pursuant to Colorado's fee-shifting statute, C.R.S. § 13-17-201. On October 10, 2019, the District Court, finding the state statute

applicable to this would-be diversity case, awarded Chase its fees, but reduced the requested amount by 25%. MacIntyre filed a Rule 59(e) motion to reconsider the award on jurisdictional grounds. Because the District Court lacked subject matter jurisdiction to adjudicate what would have been a diversity case with access to Colorado statutes, it actually had no access whatsoever to *any* of them, including C.R.S. § 13-17-201. In denying the Motion to Reconsider, Appendix D, on December 11, 2019, the court stated, page 3, that it was "not appropriate for the Court to entertain the argument" because it could have been raised earlier in MacIntyre's response to Chase's fee-award motion, and regardless, "is incorrect." In fact, on page 3 of her November 29, 2019, reply to Chase's response opposing reconsideration, MacIntyre had already explained that the timing of her jurisdictional argument cannot, by definition, be inappropriate:

> The essence of the Motion to Reconsider is a purely jurisdictional challenge to this Court's ability to award attorney's fees and thus "can be raised at any time." *Lopez* v. *United States*, 823 F.3d 970, 975 n. 6 (10th Cir. 2016), citing *Sebelius* v. *Auburn Reg. Med. Ctr.*, 133 S.Ct. 817, 824, 184 L.Ed.2d 627 (2013). If this Court deems a Rule 60(b) motion to be more appropriate—it is perfect for addressing a judgment that is void for lack of jurisdiction—then it may unquestionably construe the Motion to Reconsider as a Motion to Vacate instead. In either event, when subject matter jurisdiction is lacking, it cannot be conferred for any reason, certainly not by an alleged error, and most certainly not because a litigant supposedly used the wrong rule number in her motion.
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> "A judgment is void when a court enters it lacking subject matter jurisdiction or jurisdiction over the parties." *Williams* v. *Life Savings and Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986). "If the underlying judgment is void for lack of personal or subject matter jurisdiction. . .

the district court must grant relief" under Rule 60(b)(4). *Venable* v. *Haislip*, 721 F.2d 297, 300 (10th Cir. 1983).

MacIntyre appealed the fee award to the Tenth Circuit in a separate case, No. 20-1016. Chase's motion to consolidate the appeals was denied. Yet the Tenth Circuit ultimately reunited the twin appeals into the present case comprising both the dismissal and the fee award, affirming both on September 10, 2020. A Petition for Rehearing and Rehearing En Banc was denied on October 19, 2020

With respect to the dismissal, the Tenth Circuit gave three reasons for the application of *Rooker-Feldman*. First, MacIntyre's allegation of fraud in the procurement of the state-court judgment "depends on a federal court finding that the state courts erred in entering judgment for Chase," and "an element of [her] claim" is "that the state court wrongfully entered its judgment" (quoting *Campbell* v. *City of Spencer*, 682 F.3d 1278, 1283 (10th Cir. 2012). Appendix A at 10. Second, she cannot "prove her claims without any reference to the state-court proceedings" (quoting *Mayotte* v. *U.S. Bank*, 880 F.3d 1169, 1176 (10th Cir. 2018). *Id.* at 10-11. Third, a judgment for monetary damages "would necessarily undo the Colorado court's judgment because it would place her back in the position she occupied prior to the foreclosure." (Quoting *Mo's Express* v. *Sopkin*, 441 F.3d 1229, 1237 (10th Cir. 2006)(brackets omitted). *Id.* at 11-12.

The Tenth Circuit's analysis is factually and legally untenable. First, in her pre-foreclosure-sale position, MacIntyre owned residential real estate. Monetary

relief would obviously not "place her back in" that position. (Inconsistently, the Tenth Circuit in *Mayotte* at 1176 reached the opposite conclusion: *Rooker-Feldman* did not prevent the plaintiff from suing in federal court for the restoration of a property foreclosed upon in a state-court proceeding). Second, nothing in the Supreme Court's clarification of the *Rooker-Feldman* doctrine in *Exxon Mobil* v. *Saudi Basic Industries*, 544 U.S. 280 (2005) comes close to imposing the Tenth Circuit's unique requirement to "prove. . .claims without any reference to the state-court proceedings". Third, although a fraud claim in a Tenth Circuit diversity case automatically triggers the application of *Rooker-Feldman*, in the Fifth Circuit it does not, as long as it "is an independent claim." *Truong* v. *Bank of America*, 717 F.3d 377, 384 n. 6 (5th Cir. 2013). As the Fifth Circuit explained at 383-84:

> In sum, Truong has alleged that BOA and Wells Fargo (1) misled the state court into thinking that the executory process evidence was authentic when, in fact, it was not; and (2) misled her into foregoing her opportunity to dispute authenticity in the state-court proceedings. These are independent claims over which the district court had jurisdiction; Truong did not seek to overturn the state-court judgment, and the damages she requested were for injuries caused by the banks' actions, not injuries arising from the foreclosure judgment. (citations omitted).
>
> To be sure, the banks' actions allegedly led to a state-court judgment that inflicted further injury on Truong. But as one of our sister circuits has stated, although the damages recoverable through an independent claim might be limited by preclusion principles, "[t]he *Rooker-Feldman* doctrine does not...turn all disputes about the preclusive effects of judgments into matters of federal subject-matter jurisdiction.

The Fifth Circuit also observed at 383 (emphasis added, internal quotation marks

omitted) that **"[b]ecause Truong did not seek to reverse or void the adverse foreclosure judgment,** her request for a declaration that Wells Fargo and BOA lacked the necessary authentic evidence to support the use of executory process did not deprive the district court of jurisdiction."

What works quite well in the Fifth Circuit would not work at all in the Tenth Circuit. Because a claim about fraud in a state court is automatically seen as a direct attack on the judgment issued by that court, no plaintiff can ever convince the Tenth Circuit that the claim is "independent" and thus exempt from *Rooker-Feldman*. Because monetary damages, which would leave the state-court judgment in place, are indiscriminately seen to "undo" that very judgment, one wonders what relief *Rooker-Feldman* would *not* prohibit in the Tenth Circuit. Because a plaintiff is not allowed even to mention the state-court proceeding, in the Tenth Circuit *"Rooker-Feldman"* is a pseudonym for "collateral estoppel".

Nor is the Fifth Circuit alone in its correct interpretation of *Rooker-Feldman*. See, for example, *Vossbrinck* v. *Accredited Home Lenders*, 773 F.3d 423, 427 (2nd Cir. 2014): ". . . Vossbrinck's *pro se* complaint can be liberally construed as asserting fraud claims that are not barred by *Rooker-Feldman*—because they seek damages from Defendants for injuries Vossbrinck suffered from their alleged fraud, the adjudication of which does not require the federal court to sit in review of the state court judgment. . ." See also *Loubser* v. *Thacker,* 440 F.3d 439, 441-42 (7th Cir. 2006):

> The claim that a defendant in a civil rights suit "so far succeeded in corrupting the state judicial process as to obtain a favorable judgment" is not barred by the *Rooker-Feldman* doctrine. *Nesses v. Shepard,* 68 F.3d 1003, 1005 (7th Cir. 1995). Otherwise there would be no federal remedy other than an appeal to the U.S. Supreme Court, and that remedy would be ineffectual because the plaintiff could not present evidence showing that the judicial proceeding had been a farce.

With respect to the second question presented above, the District Court, in its order granting attorneys' fees to Chase, had relied upon two Tenth Circuit cases. But on page 4 of its order denying reconsideration, (Appendix D), it acknowledged that only one applied: a case of attorneys' fees awarded under Colorado's fee-shifting statute, despite dismissal for lack of subject matter jurisdiction: *Infant Swimming Research* v. *Faegre & Benson*, 335 F.App'x 707, 715 (10th Cir. 2009). *Infant Swimming*, besides being unpublished, offers no clue as to how a court lacking subject matter jurisdiction over a would-be diversity case finds the jurisdiction to utilize C.R.S. § 13-17-201. The Tenth Circuit—which, despite the District Court's reservations on page 9 above, did review the issue on pages 17 of Appendix A—completely ignored the unhelpful *Infant Swimming* and cited instead *Lorillard Tobacco Co.* v. *Engida*, 611 F.3d 1209, 1217 (10th Cir. 2010)(alterations omitted): "A district court need not have subject matter jurisdiction to award attorney's fees pursuant to Colo. Rev. Stat. § 13-17-102." That, of course, is utterly incorrect in the circumstances of the present case. *Lorillard* was voluntarily

dismissed by the plaintiff, not involuntarily dismissed by the court for lack of subject matter jurisdiction. Nor may a federal court ever gain access to a state statute, including a fee-shifting statute, unless it is actually exercising diversity jurisdiction, which the District Court in this case insists it never was. This misapplication of *Lorillard* violates the long-established Tenth Circuit rule in *Jones* v. *Denver Post*, 203 F.3d 748, 757 (10th Cir. 2000)(emphasis added): "When **exercising jurisdiction,"** the Tenth Circuit stated, "if our jurisdiction rested on diversity of citizenship" then "we must apply the substantive law of the forum state." That is the rule throughout the United States. The Tenth Circuit was never exercising diversity jurisdiction. It awarded attorneys' fees as if it were.

VII. REASONS FOR GRANTING THE PETITION

It is clear that the Tenth Circuit is not heeding Justice Ginsburg's precise clarification of *Rooker-Feldman*: a doctrine that is "confined to. . . cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil*, 544 U.S. at 284. The Tenth Circuit's unique ideas about the doctrine place it in conflict with the Second, Fifth, and Seventh Circuits. On the subject of attorneys' fees, the Tenth Circuit is in conflict with all others. No other circuit, having affirmed a dismissal for lack of subject matter jurisdiction emanating from a *federal* doctrine, then claims a right to award attorneys' fees under a state statute, without ever having exercised diversity jurisdiction. The Supreme Court has not yet addressed this specific issue.

VIII. CONCLUSION

The Petitioner respectfully requests that the Supreme Court grant this Petition as to both questions presented.

Respectfully submitted on this eighteenth day of March, 2021.

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