No. 20-1703

Supreme Court, U.S.
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In the Supreme Court of the United States

Martin Dekom, and on behalf of the Little People
Petitioner

v.

Fannie Mae, Bank Of America N.A., Nationstar Mortgage LLC, Elisabetta Coschignano, William Riccio, Berkman Henoch Law Firm, Bruce R. Cozzens, Thomas A. Adams, George Peck, Ellen Brandt, Gross Polowy Law Firm, Sandelands Eyet Law Firm, Erik Vallely, Matthew Burrows, Brian Goldberg, Laura Strauss, Geoffrey Jacobson, Keiran Dowling, Laurence Chirch, Aprilanne Agostino, Darrell Joseph, Randall Eng, Alan Sheinkman, Nassau County Clerk, Hans Augustin, Oscar Prieto, 8 Motions Clerks, 2nd Department Appellate Judges, Pawns 1-100, Goldman Sachs, As Owner Of "Pool 1",
defendant-appellees

ON PETITION FOR A WRIT OF CERTIORARI TO THE SECOND CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

MARTIN DEKOM
Petitioner

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Questions

Can courts alleviate their backlog by letting staffers usurp the authority of judges?

Is the Rooker-Feldman doctrine a safe harbor for fraud?

Can costs be levied after a mandate, and when a party admits their taxation is false?

Can courts implement shortcuts based on class without implicating the Second Amendment?

The Answer is No.

Parties

Martin Dekom, And On Behalf Of The Little People, Petitioner

Fannie Mae, Bank Of America N.A., Nationstar Mortgage LLC, Elisabetta Coschignano, William Riccio, Berkman Henoch Law Firm, Bruce R. Cozzens, Thomas A. Adams, George Peck, Ellen Brandt, Gross Polowy Law Firm, Sandelands Eyet Law Firm, Erik Vallely, Matthew Burrows, Brian Goldberg, Laura Strauss, Geoffrey Jacobson, Keiran Dowling, Laurence Chirch, Aprilanne Agostino, Darrell Joseph, Randall Eng, Alan Sheinkman, Nassau County Clerk, Hans Augustin, Oscar Prieto, 8 Motions Clerks, 2nd Department Appellate Judges, Pawns 1-100, Goldman Sachs, As Owner Of "Pool 1", Defendants-Appellees.

Decisions at Issue and Jurisdiction

The orders of the 2nd Circuit mandating dismissal (ECF 262) entered March 4, 2021, and taxing costs (ECF 268) entered April 21, 2021. This Petition For Writ of Certiorari is timely filed within 90 days. The jurisdiction of this Court is by 28 U.S.C. § 1254.

Constitutional Principles

The Second Amendment as final guarantor of the rights to Due Process and Equal Protection.

Preliminary statement

The essence of justice is the equal application of established, articulated principles to all litigants. When the courts pick and choose versions of justice according to their favor, there is

justice for none. Such a condition, left unchecked, triggers the rights inherent in the Second Amendment.

Statement of the case

Petitioner Martin Dekom fell behind on his home mortgage in Nassau County, NY. To circumvent the state's notoriously lengthy foreclosure process, the local court created "Foreclosure Inquest." It shortened the procedure by removing all the motions required by statute, deeming the defendant to have defaulted (not answered), and eliminating the defendant's statutory protections and rights. Dekom discovered that "Foreclosure Inquest" was in aid of a nationwide racket. Specifically, Fannie Mae secretly took ownership of billions of dollars worth of mortgages, then got paid back on those losses multiple times over, by lenders, the federal government, and then by the homeowners. Dekom appealed the state court foreclosure and ultimately lost. Concurrent with that appeal, he brought this case, and sued Fannie Mae for its double-recovery scheme, as well as a host of others who aided it. He alleged that "Foreclosure Inquest", not being a product of statute, was a fraud scheme in violation of the Fair Debt Collections Practices Act. After some years of litigation in multiple venues, the defendants admitted to the salient facts: that "Foreclosure Inquest" is not a statutory process, and that Fannie Mae is in fact the secret owner of the mortgage. The case was dismissed, and affirmed on appeal. One of the appellees billed for its printing costs. Dekom disputed the costs, since the printing requirements had been eliminated due to COVID. He also moved to sanction the taxing litigant. There was no opposition. The court awarded costs in a reduced amount, without explanation.

Throughout the course of litigation, Dekom discovered that the practice of segregating pro se and poor litigants is quite common. At both the state and federal levels, judges routinely sub out large portions of their caseload to clerks and staffers. This is done initially at the clerk's

window, where cases involving pro se and in forma pauperis parties are identified, coded, and then routed. Those who do not pay court costs or pay attorneys are seen as clogging the docket, interfering with the substantive work of the courts. Their cases are disposed of as quickly as possible, instead of adjudicated in accord with the laws of the land. The Nassau county "Foreclosure Inquest" is the exception only in that they were fool enough to advertise it. In academic papers this bifurcation is whitewashed with names like the "learned hand" track for "real" adjudication, and "black box" for those relegated to staffers for disposal. In EDNY, the practice is known colloquially as "nigging," which implies the racial slur referring to the fact that poor litigants are disproportionately minority. The staffer's "bench memo" is a secret document; unserved, unpublished, and almost entirely unknown to poor parties. Once approved, often by its own author, it is then digitally stamped with the judge's signature as a decision.

A feature of being segregated out of the statutory judicial process is that the laws and precedents which protect fee-paid litigants are not applied to the similarly situated poor. The fact patterns are misstated and corrupted to fit dismissal. The decisions in "black box" cases are routinely classified as "unpublished" and "not precedential". In the Third Circuit, attorneys citing such cases are expressly prohibited from saying "this Court held..." despite the fact that it is exactly what the court did. As a result, there are commonly two lines of cases in a Circuit which hold opposite results, depending on the class of the litigant, in violation of the 14th Amendment. This case exemplifies such an impermissible split in the Second Circuit. The petitioner seeks a writ of certiorari to review the decision of the 2nd Circuit, as it fails on constitutional grounds, as well as presents an opportunity to settle a Circuit split on the Rooker-Feldman doctrine's treatment of fraud.

Reasons to grant the petition

The usurpation of judicial powers perverts justice

It is an exercise in futility for a member of a class to argue the law, when the courts systematically deny that class the protections and benefits of the law. In such an event, the only reason to do so is the moral imperative to exhaust all possibilities. That this disadvantage is "systematic" is beyond question: no one reviewing this petition denies the existence of bench memos, that litigants are not permitted to see or rebut them. The website of the 2nd Circuit* * (see https://www.ca2.uscourts.gov/staff_attorneys/staff_attorneys_office.html) details how the circuit hires lawyers with *no* experience to digest the cases for the circuit judges. This insulates judges from the original papers and evidence. Doing so eliminates the cornerstone systemic check: that the actual evidence is weighed by the actual judge. Those same facts drawn and colorized by a novice prior to presentation lead to the absurd, as here: the 2d Cir. decision states that "Foreclosure Inquest" is the proper application of New York's CPLR 3215(f) (at p.8). However, the evidence showed defendant Nationstar admitting that its default was not obtained by CPLR 3215, but by an "alternative method" to the statutory process. In fact CPLR 3215(e) requires that application for a default judgment is made by motion. This satisfies Due Process notice. Nationstar filed no motions at all. CPLR 3215(f), cited in the decision, requires proof of the claim. However no such evidence was served on Dekom, nor was any certified by the County Clerk as a record in the proceeding. The 2d. Cir. Decision also falsely states that Dekom's allegations regarding the "Foreclosure Inquest" process are "conclusory and lack a basis in pleaded fact or law." However, the novelty of "Foreclosure Inquest" was extensively documented. It had been published in the Freddie Mac guidelines as an "alternative" to the foreclosure process, and lauded for its innovation in the statewide journal of court administration. Nor did the defendants deny its existence, also

describing it as an alternative to statute. The only problem is that an "alternative" to the statutory process which bypasses requirements laid down by the legislature is not, by definition, "legal." Such proceedings are derisively known as "star chamber." The 2d Cir. decision falsely states that Dekom "did not respond to the (BOA) summons", despite that all sides acknowledge that he moved to dismiss, and said motion went unopposed. The decision also falsely states that he had a "full and fair" opportunity to litigate, including cross-examination. The transcript in evidence shows he was prohibited from questioning standing and other fatal topics. It also shows evidence was given to the court ex parte, nor was Dekom permitted to see it. In fact, it was first introduced as a court record by the plaintiff during the appeal, altering the record without a motion.

The decision's perversion of justice is not limited to facts, but also the law, ignoring well-settled protections and equitable doctrines. For instance, it conflates a default judgment with "on the merits" to give it preclusive effect. Numerous and uniform cited Supreme Court decisions hold otherwise, that "default" is not on the merits, and is not preclusive. The decision denies the CPPA claim (a D.C. statute) because Dekom was not in D.C., ignoring the fact that he brought the case in the District of Columbia, against a D. C. resident (Fannie Mae) subject to its "Little FTC" laws. The 2nd Circuit reasoning would immunize a wrongdoer from its own state laws, as long as it screwed aliens- a facial brooking of the 14th Amendment. Further, equitable tolling, lately reaffirmed by this Court in *Rotkiske v. Klemm*, 589 U.S. ___ (2019), was ignored to fabricate a statute of limitations defense against the FDCPA claims. This is particularly galling as Dekom particularized violations that were concurrent with his federal suit seeking to enjoin their ongoing use and effect. That effect continues to this day as the judgment of the "Foreclosure Inquest" remains unexecuted.

The 2d Cir. decision also ignored that the federal fraud statute of limitation is seven years, putting all of the hundred-plus detailed violations within its ambit. Likewise, the 2d Cir. decision rejected the principle, also well settled and uniform in precedent, that a decision of a fraudulent court, as with any lacking jurisdiction, has no force.

In correction of both the factual record and the application of longstanding doctrines, petitioner reiterates by reference, verbatim, the arguments he presented to the Second Circuit. For these reasons the petition for a writ of certiorari should be granted.

The Rooker-Feldman doctrine is not a "Get Out of Fraud Free" card

when the topic is the Rooker-Feldman doctrine, the phrase "fraud exception" is a clever term of art which gives the impression that the doctrine is a broad and cornerstone piece of law, of which there is only a keyhole-sized escape. The Supreme Court described it in contrary terms in Saudi Basic v. Exxon (2005). In this case, weighing the facts as they lie, to wit, that a fake court can issue a preclusive decision, the Second Circuit judgment has sent the message that even the most fraudy of frauds is well-guarded by Rooker-Feldman. Other Circuits agree, including the 5th, 7th, 10th, and 11th . However, the 6th and 9th Circuits correctly recognize that fraud, by its improper nature, cannot coexist with a just judgment. Aside from either argument, there is the plain fact that an unwritten equitable doctrine does not trump the black letter of statute. Indeed it is newly invented, as neither case from which it draws its name is yet a hundred years old (Rooker, 1923; Feldman, 1983). The full faith and credit clause does not erase the preemption of federal consumer protection statutes, such as the FDCPA, and fraud, as claimed here. While Congress penned express conflict preemption in the FDCPA, the absence of such a clause for fraud does not create one. By itself, federal fraud is organically preemptive, until Congress, and only Congress, says otherwise (cf, *Buckman* Co. *v. Plaintiffs Legal* Comm., 531 U.S. 341 (2001). Thus the "exception" phrase is a misnomer, as

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a "fraud exception" would only exist if Congress created a safe harbor *permitting* fraud in the context of court proceedings. There is no such language in the United States Code. Federal fraud prohibitions apply with equal force to them as with doctors, charlatans, and con men; they apply in court and outside of court. The 2nd Circuit decision cannot stand as a bulwark to the fraudulent "Foreclosure Inquest", or any other fugazy process. For the reasons above, the petition for a writ of certiorari should be granted.

Fabricated costs cannot be assigned to a losing party after the fact

The denial of petitioner's appeal also provided for taxing of costs. Defendant law firm Berkman Henoch (BHPP) billed for its printing costs. Not only did it exceed the rates permitted by Local Rule, but in fact there were no allowable printing costs, as the Court had eliminated the printing requirement as a COVID measure. The mandate was issued on March 4, 2021, without any taxation. Dekom objected to the costs, arguing that the amount due was zero, and that the mandate, having been issued, foreclosed the issue. Petitioner also moved to sanction BHPP for the false representation of actual and permissible costs. BHPP did not oppose either the disputed costs or the sanction. The Court ignored the motion to sanction and taxed costs of $1209 on April 21, 2021. This is impermissible as the issuance of the mandate gives finality to the Court's direction, and it lacked the power to tax after the fact. Further, the Court's power to tax is only as an arbiter, not advocate. It cannot volunteer costs nor reject admissions of fact which reduce costs. It is well settled that a motion without opposition is deemed admitted for the purpose of the relief requested, *Ingaseosas Int'l Co. v. Aconcagua Investing Ltd.*, 479 F. App'x 955 (11th Cir. 2012) ("[C]ounsel, by its silence, implicitly agreed to entry of the stay."), see also Black's Law Dictionary (9th ed. 2009), "he who is *silent* is taken to agree." The Court should not do a party's light work or heavy lifting; it is a passive instrument, *U.S. v Sineneng-Smith*, 590 U.S. _(2020). It should not compel a

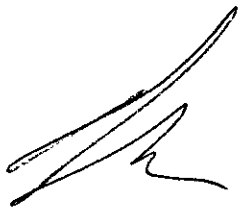
party to attack or defend, or supplant a party's argument with an alternative one, *id.* Having admitted to the allegation that there were in fact no required costs, BHPP should have consequently been awarded nothing. That the Court ignored the motion to punish for the misrepresentation shows that it has a favored class and a disfavored one, as petitioner has alleged. The District Court is not empowered to modify this award; only this Court can review. For the reasons stated, this Court should grant the writ petitioned for.

The Second Amendment is the last lawful defense of natural rights

There's a bumper sticker/meme/T-shirt which says, "The 2nd Amendment Ain't About Huntin' Deer!" The same sentiment is expressed with greater seriousness by the Black Lives Matter movement slogan, "No justice, no peace." Both reflect a principle of self-defense that violence is an acceptable remedy for tyranny. If an elderly Jewish woman publicly admitted that in 1938 she shot a Nazi clerk in the face and fled Germany, no authority would seek- or permit- her extradition. The clerk would be recognized as an agent of tyranny, even though its smallest cog. Indeed, Nazi fascism may be a different scale of evil than "Foreclosure Inquest" or EDNY's "nigging" practice, but those invite a closer comparison: how would a crowd react if a black man admitted that in 1965, he shot an Alabama sheriff enforcing segregation? There is no canon of law, Circuit split, or modern guideline as to how much tyranny should be tolerated. Courts generally routinely denying justice to a class of people, disproportionately minority, and doing so in secret, is an intolerably long train of usurpations and abuses. The fact that it is being normalized, even lauded, is a Marie Antoinette-level of political tone deafness which invites mass exercise of Second Amendment rights. For this reason this Court should grant the writ.

Conclusion

The questions presented read like An Idiot's Guide to Law. Can some inexperienced twentysomething don the robes of a federal judge? What a horrible idea. Can lawyers be given a safe space to lie their asses off? How about...no. Can a judge play goalie for a party too lazy to defend? Of course not. Can a branch of government be hostile to natural rights? Not without fomenting further hostility (see "Riots, 2020"). For these reasons and the for sake of the Republic, this Court should grant the petition for a writ, for the express purpose of returning law to the law, as described.



I, Martin Dekom, petitioner, state true under penalty of perjury.

Respectfully submitted.

/s/

2 June 2021

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Certificate of Service:
I hereby certify that on June 2, 2021, I served the foregoing document on all parties by electronically filing it through the PACER/ECF system, in compliance with Fed. R. Civ. P. 5.

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