No. 20-399

In the Supreme Court of the United States

Jung Hyun Cho et al,

Petitioners,

v.

Select Portfolio Servicing, Inc. et al.

Respondents

ON PETITION FOR REHEARING OF
THE PETITION FOR
WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Jung Hyun Cho, Kyu Hwang Cho, Eun Sook Cho and Eui Hyun Cho, the Petitioners, appearing pro se in this Court, move this High Court to grant the rehearing on No. 20-399, the petition for a writ of certiorari to the United States Court of Appeals for Ninth Circuit. Grounds are:

1) A finding that this High Court erred in overlooking a judicially cognizable issue central to the Eight Questions Presented: allegations of inherent systemic deficiency inciting oppressive and discriminatory practices the Chos, as pro se litigants, have suffered unconscionably at federal and state courts in their frustrated efforts to seek for a fair and equal chance to be heard.

2) A reasonable doubt that the COVID-19 pandemic and the presidential election have worked most favorably for the Chos' legal challenge pro se for federal redress under Civil Rights Act of 1968 aka Fair Housing Act of 1968(FHA).

INTRODUCTION

Approximately 10 million homeowners lost their homes in the aftermath of the 2007-2008 housing crisis, and most of them, racially minority groups, could not afford to be represented to be heard. The Cho family is one of them.

The housing crash caused a global financial crisis at a superfast pace. The rampant mortgage frauds by industry insiders targeted ethnic minority to create a

new market of subprime loans and were reportedly the direct cause for the global financial crisis spurred by the 2007-2008 housing crisis.

Loan modifications for at-risk homeowners under HAMP and National Mortgage Settlement followed years apart at the initiative of Federal Housing Finance Agency(FHFA), but banks, lenders, real estate brokers and eviction law firms combined forces to game the FHFA initiative, capitalizing on pleading-stage presumption of innocence for civil frauds and their established networks across the state and federal courts, when compared to pro se litigants' once-in-a-lifetime chance to fight against those gargantuan groups of influential industry specialists.

It begs the question of why the Chos, albeit qualified, were singled out of the loan modification benefits of HAMP TPP and even the National Mortgage Settlement. The Chos sued.

Legal fights of this sort stayed in pleading stages for multiple years, normally 5 to 6 years, during which spoliation of evidence and unfiltered jobs of law clerks or staff attorneys at courts are the usual thing, particularly for pro se litigants destined to be mentally, physically and financially drained will eventually give up.

This inherent systemic deficiency is a significant betrayal of public confidence in the judiciary system, and will pose an epoch-making challenge to foreseeable post-pandemic eviction floods that are estimated to be much bigger than before.

For over three decades, the Chos have worked their butt off with a 6-7-day workweek with a daily range of 13 to 15 hours, and is still far from being entitled to home ownership.

BACKGROUND

The Chos immigrated into California from South Korea in late 1990. The Cho family got into restaurant business in 1996 and continued until 2003, when they had lost everything due to the 9/11 attacks of 2001. They were penniless, almost

homeless and facing a two-month notice from their rental home, and had to borrow from friends for survival.

In efforts to rise from the ashes, the Chos had bought the property in question in September 2004, thanks to subprime loans offered by Deutsche Bank and some borrowings from friends. At the time, Jung Hyun Cho was aged at 27 years and Eui Hyun at 24, young enough to expect their potential income growth in the years to come and eager enough to support their beleaguered parents.

In purchasing the property, Jung Hyun hesitated for a while to get the subprime loans with the AMR rates at 6.99% and 10.895%, because it was foreseeable the payment may exceed the family's means. However, the loan broker repeatedly assured Jung Hyun of early refinancing within a year, and he took the loans from the lender. Upon disbursement of the loans, however, the lender made a blitzkrieg exit for private-label securitization purposes.

Then came the 2007 housing crash. Nonetheless, the Chos were able to keep their mortgage payment current, and even after Countrywide Home Loans, the then loan servicer, came in to abruptly raise the monthly payment to $4,600 from the ongoing $3,400. The $4,600 accounted for over 80% of the then household income.

Then came the family sickness in August, 2008. Naturally, the loan default followed because Eun Sook was diagnosed with an incurable rare genetic disease that posed a threat of an imminent loss of vision. Cash payment for medical treatment was the only option at that time, when there was no Obamacare, and the medical treatment to prevent the loss of vision would have costed $5,000 per injection into both eyes at the bimonthly interval.

The medical treatment was only available arguably at one place in the San Francisco Bay area at that time. Finally, the generic medication at $1,800 for both eyes for every quarterly visit was what Eun Sook Cho had to settle for.

Still, she gets an injection into her right eye bimonthly, with her left eye having a vision of 20/250, legally blind.

Acquiring Countrywide in 2008, Bank of America(BofA) offered the 3-month HAMP TPP at $2,170/month, starting in May 2010. After 7 months of the TPP payments, BofA reneged on making it permanent for no known reason. The 7th payment check was never cashed and not returned to the Chos.

Notices of default and cancellations, and fraudulent inducement to modification alternately followed numerously so that the Chos had to wait instead of suing. No official forbearance was given. Again in Feb. 2013, BofA offered another loan modification under the National Mortgage Settlement. However, BofA played the runaround, asking for another application by fax several months after the initial application of Feb. 2013, ascribing it to non-receipt.

After numerous inquiries from the Chos, BofA notified the Chos of transfer of servicing to Select Portfolio Servicing, Inc.(SPS), effective in November 2013. BofA stated expressly the application status will remain active with SPS.

SPS stayed silent on the status for about a year. And then, SPS issued a notice of default in September 2014 and shortly cancelled it, asking for a new application and even an individual application each from non-obligors Kyu Hwang, Eun Sook and Eui Hyun. The so-called dual tracking was prohibited in California, but SPS was not and is not a California corporation.

Upon receipt of the new application, SPS played the runaround, asking for supplementary but non-essential and repetitive information numerously from each of the Chos. Circa April 2016, SPS offered an in-house modification, which remains the same as the original loan payment at around $3,000, way above 31% of the household income, the core regimen of HAMP.

After repeated requests, SPS reduced the monthly payment offer by $100, which was still unsustainable for the Chos, whose household income levelled off since

2010 from the time of BofA's HAMP TPP offer. Amidst over a dozen foreclosure auction threats to extort the unsustainable offer, the Chos were able to retain a law firm in July 2016, with a lawsuit against SPS set for mid-August 2016.

For some reason, however, the law firm failed to sue on schedule, asking the Chos to accept the SPS offer of $2,900. After a short stint, the law firm quit the Chos. This offer was unsustainable. For several months thereafter, the Chos contacted over a dozen law firms in order to sue SPS. However, none of them offered to help. In October 2016, non-judicial foreclosure auction took place but no cash bidders showed up.

ARGUMENT

The Chos have experienced countless incidents of oppression that undermined the merit of this case irreparably at both federal and state courts. The foregoing incidents might have a reasonable person entertain a doubt that pro se litigants may get a fair and impartial trial.

The Cho, appearing pro se, have suffered irreparable damages from inherent systemic discrimination and oppression, in addition to the loss of their home: an insult-added-to-injury situation.

The incidents the Chos have encountered are listed as new matter that had escaped this Court's attention but details are minimized for brevity.

[1] State Courts

1. Now-retired two judges for Solano County, known to have sought corporate interest, worked together to undermine the Chos' challenge to jurisdictional defects and efforts to consolidate the unlawful detainer action and the Chos' quiet title action.[Details omitted for brevity]

2. Opposing party tactically used scorched-earth tactics numerously to mislead the trial court and review court to deter the Chos' challenge to the

jurisdictional issue. The courts abused discretion to condone such unethical conducts done by opposing counsels with impunity.[Details omitted for brevity]

3. Upon rendering eviction judgement, the same judge fast-tracked a related quiet title action by sustaining untimely demurrer notwithstanding the Chos' request for recusal. Finally, the judge got notice of disqualification from the Chos prior to rendering judgment. Two months later in February 2018, the two judges retired. Eight months after the disqualification, the state court had sneaked up on judgment to be signed by another judge who was suspected of conflict of interest.[Details omitted for brevity]

4. The Chos' motions came to a blanket denial. One of them for challenging jurisdiction over eviction was cancelled by deception by a court clerk.[Details omitted for brevity]. The Chos' frustration caused them to sue in the federal court.

5. Appellate division intimidated the Chos by ordering the Chos to show up in a misdemeanor court, while the Chos' petition for transfer to an appellate court filed months earlier was still pending. In civil disobedience, the Chos did not attend the hearing.[Details omitted for brevity].

6. A court clerk arbitrarily returned unfiled the Chos' flawless application for pendency of action at a time when a possible sale of the property is impending with a house flipper[Details omitted for brevity]. Four months later, the chief judge of the court signed the same application with a new date but no correction from the previous one. By that time, the property had been sold to the house flipper, harming the quiet title action pending irreparably.

7. The appellate court allowed opposing counsel's Respondent Brief to be filed untimely without good cause, 85 days after a statutory due date, notwithstanding the Chos' express opposition to the 60-day extension. No court record of an official grant of the 60-day extension. In violation of California Rule of Court(CRC) Rule 8.212 and Rule 8.220. The Rule 8.220 stipulates a ruling based on a petitioner's

opening brief after failure to file within 30 days from Opening Brief filed or an extended date granted, and also stipulates a possibility of sanction. The Chos filed a motion for sanction on grounds of failure to file timely, but it was denied for no cause shown.

8. The review court affirmed the superior court's order to sustain demurrer filed by opposing counsel. The Chos petitioned timely for a rehearing but was denied. The Chos filed a petition with the Supreme Court of California for review but was denied on grounds of untimely filed.

[2] Federal Courts

1. In response to the district court's order to show cause, 30-odd judicial errors had been claimed by the Chos, but were not entertained. Inter alia, the Chos' motion for default judgment based on failure to respond to summons was not entertained timely.

2. The magistrate tribunal condoned two opposing parties to abuse consent jurisdiction for over a year and to electronically file a consent a few days prior to dismissal, absent service to the Chos.

3. A motion for Temporary Restraining Order for injunction filed by the Chos was not timely entertained on grounds of non-existent deficiency.

4. The standards of review set by the appellate court stayed irrelevant in view of the sliding scale of deference. It begs the question whether affirmation is based on any substantiated discovery process that reasonably supported the affirmation.

The memorandum issued by the review court lacked substantiation of any factual basis it stated it relied on, and appeared demonstrably circular.

The review court failed to provide a basis for skipping oral argument but fast-tracked the review process to toss out the Chos' Notice of Claim of Constitutionality and Request for Judicial Notice, the most essential component of the case.

The petition for a writ for mandamus on remand was denied on questionable grounds.

5. Fraud upon the court by a district judge with questionable jurisdiction to alienate the removal case from the critically related federal action pending.

The actual filing date of removal(July 5, 2017) had been antedated to April 24, 2017 in an attempt to create the appearance of the removal case preceding the pending federal action(May 17, 2017). It was remanded for lack of subject matter jurisdiction. *See United States v. Throckmorton.*

In *Throckmorton*, the Supreme Court reiterated "the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments.", while balancing this doctrine with another doctrines of ***interest rei publicae, ut sit finis litium***, and ***nemo debet bis vexari pro una et eadam causa.***

An excerpt from Marquette Law Review VOL. 36 Issue 2 Fall 1952:

> The general rule in the United States is that the acts for which a court of equity will grant relief from a judgment because of fraud must relate to extrinsic or collateral fraud and that intrinsic fraud is not sufficient.
>
> The United States Supreme Court followed that rule in *United States v. Throckmorton,* and defined extrinsic fraud as that relating to matter not tried by the court rendering the judgment and intrinsic fraud as that relating to matter on which the decree was rendered, and stated that:
>
> > "Where the unsuccessful party had been prevented from exhibiting full his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by acts of the plaintiff, or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or

> where the attorney regularly employed corruptly sells out his client's interest to the other side - these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing."

Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985)*, the court stated "[F]raud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury."

By all appearances, the self-evident antedating is far from a harmless error, but more likely to be viewed by any reasonable observer as an egregious attempt to suppress the solid basis of law and facts that supported removal.

It begs the question as to whether an Article III judge can betray the will of people by making it more likely that the impartiality of the court has been so disrupted that it can't perform its tasks without bias or prejudice.

In *Pfizer Inc. v. Lord, 456 F.2d 532 (8th Cir. 1972)*, the Court stated that "*[I]t is important that the litigant not only actually receive justice, but that he believes that he has received justice. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.*"

Some may argue judge disqualification in an isolated and independent case is not appealable on grounds of judicial immunity, but the appearance of lack of impartiality spaced over a timeline of two related cases caused by an arguably disqualified judge appears to be in a different dimension of appealability, simply because "a judge is not the court". *See People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).*

In 1994, the U.S. Supreme Court held that "*[D]isqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." See Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994).*

The Supreme Court has also held that "*[i]f a judge wars against the Constitution, or if he acts without jurisdiction, he has engaged in treason to the Constitution. If a judge acts after he has been automatically disqualified by law, then he is acting without jurisdiction, and that suggest that he is then engaging in criminal acts of treason, and may be engaged in extortion and the interference with interstate commerce.*"

The Chos filed a motion to quash remand by the non-assigned Article III judge and recusal, but was not entertained.

"Recusal under 28 U.S.C § 455 is self-executing; a party need not file affidavits in support of recusal and the judge is obligated to recuse herself sua sponte under the stated circumstances." *Taylor v. O'Grady, 888 F.2d 1189 (7th Cir. 1989).*

CONCLUSION

Contrary to landmark decisions for similar FHA arguments, no equitable relief has been accorded to the Chos all across the federal and state trial courts and review courts. This fact threatens a severe attack on the law of the land and due process. The COVID-19 has deprived the Chos of a better chance to access equitable remedies as well as any third-party help or amicus briefs, let alone hardships of document preparations pro se.

The Chos respectfully pray for a rehearing on the petition for certiorari.

Respectfully Submitted

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Date: December 16, 2020

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PROOF OF SERVICE

I, Jung Hyun Cho, do declare that on this date, December 16, 2020, as required by Supreme Court Rule 29, I have served the enclosed PETITION FOR REHEARING OF NO. 20-399 on each party to the above proceeding by electronically mailing the documents.

The names and addresses of those served are as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 16, 2020

Jung Hyun Cho

CERTIFICATION OF GOOD FAITH

I, Kyu Hwang Cho, do certify that this petition for the rehearing of this Court's decision of Nov. 23, 2020 on No. 20-399, PETITION FOR WRIT OF CERTIORARI, is timely filed in compliance with Rule 34 and Rule 33(g), and on the restricted grounds specified in Para. 2, Rule 44, of which details are delineated herein, and that it is presented in good faith and not for delay.

The Filing Fee of $200 is enclosed herein.

Jung Hyun Cho, Petitioner

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