NO. 20-596

IN THE

SUPREME COURT OF THE UNITED STATES

LEROY E. SCOTT - Petitioner

VS.

CITY OF ST. PETERSBURG, FLORIDA - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

FLORIDA SECOND DISTRICT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

Leroy E. Scott, pro se Petitioner

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QUESTIONS PRESENTED

1. Is the PER CURIAM Affirm opinion, as applied in this case, a pretext for discrimination?

2. Pursuant to Article VIII, Section 2, Florida Constitution, as implemented by Chapter 166, Florida Statutes, municipalities in Florida have been granted broad home rule powers. Is the granting of unchecked home rule powers to a municipality constitutional?

3. The Defendants disputed the Plaintiff's lawsuit and demanded a jury trial pursuant to the Seventh Amendment, U.S. Constitution. The Plaintiff filed a Motion to Strike Defendants' Jury Trial Demand pursuant to Chapter 702, Florida Statute. Chapter 702, Florida Statute does not govern the foreclosure of municipal liens that were imposed against the Defendants' property. The Court granted the motion. Were the Defendants deprived of their constitutional right of a trial by jury?

4. The Defendants are descendants of former African Slaves. To dispute the Plaintiff's Motion for Summary Judgment, the Defendants filed Affirmative Defenses; Opposition to Plaintiff's Motion for Summary Judgment; Request for Production; and Defendants summary judgment evidence. The FINAL JUDGMENT Order granting the Plaintiff's Motion for Summary stated:

> "Defendant(s) failed to file any affidavits or evidence which would create a genuine issue of material fact which would preclude summary. Judgment is undisputed as a matter of law."

All of the Defendants filings and arguments were ignored by the Court. DO BLACK LIVES MATTER under the U.S. Constitution?

5. The City of St. Petersburg, Florida uses ABATEMENT in lieu of a code enforcement method to handle city ordinance violations. The City Code Inspector sent the Defendants (property owner) a Notices that read as follows:

> "The referenced property was inspected on ... and conditions were found which are listed on the attached page(s) that are a violation of City Code Chapter 16. You are hereby notified that these violations must be corrected within ten (10) days of this Notice or by ..., whichever is later.
>
> **If ALL CONDITIONS are not corrected by the compliance date, the City will cut, trim, edge and clear the property to correct the violations of the City Code. To property perform this maintenance, the City will also remove any junk, rubbish or other material from**

the property. The cost of this work, including administrative expenses, will be charged to you in the form of a lien against the property.

Submit a written appeal to the City Clerk to appeal the finding that there is a violation within ten (10) days of the date of this letter."

The liens that the city imposed against our property and not served are recorded as special assessment liens. Fla. Stat. Ch. 170 governs special assessments. It enumerated purposes for and procedure for levying a special assessment. Residential property maintenance is not a purpose for levying a special assessment and the City did not levy a special assessment prior to performing property maintenance. Is the City's ABATEMENT constitutional?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

[City of St. Petersburg, Florida – *Plaintiff*]
[Leroy E. Scott – *Defendant*]
[Linda J. Scott – *Defendant*]
[Alliance Mortgage Company – *Defendant*]

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- Proposed Order with cover letter that was sent to Judge Jack Day. It was mailed to the Defendants on September 28, 2018.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be granted to review the opinion below.

OPINIONS BELOW

Florida Second District Court of Appeal PER CURIAM Affirm (PCA) Opinion for Case No. 2D19-2758, LEROY E. SCOTT and LINDA J. SCOTT v. CITY OF ST. PETERSBURG, was filed on May 20, 2020. It appears in Appendix A to this Petition.

BASIS FOR JURISDICTION

Despite the fact that review of a PCA by the Florida Supreme Court is unavailable, an appellant can bypass the Florida Supreme Court and seek review of a PCA directly in the United States Supreme Court. In *Florida Star v. B.J.F.*, 530 S.2d 286, the Florida Supreme Court specifically noted that an appellant may bypass the Florida Supreme Court and appeal directly to the U.S. Supreme Court when seeking review of a PCA. *Id.* At 288 n. 3. The Court noted that a "district court decision rendered without opinion or citation constitutes a decision from the

highest state court empowered to hear the case." *Id.* at 288 n. 3. Therefore, because the appellants must exhaust review within a state system before proceeding to the U.S. Supreme Court, the *Florida Star* Court officially verified that appellants who receive PCAs from the district court of appeal may proceed directly to the U.S. Supreme Court.

Appellants filed a timely "Appellants' Motion for Issuance of a Written Opinion, Rehearing, or in the Alternative, Rehearing En Banc". Florida Second District Court of Appeal entered an Order denying the Appellants' Motion on July 29, 2020. The Order appears in Appendix B to this Petition.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV _ ...." No Warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V _ " No person shall be ...; nor be deprived of life, liberty, or property, without due process of law; ...".

Amendment VII _ "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ...".

Amendment VIII _ "..., nor excessive fines imposed, ...".

Amendment XIV, Section 1. _ "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...".

II. STATUTORY PROVISIONS INVOLVED

42 U.S. Code § 1983. Civil action for deprivation of rights _ "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity,..".

STATEMENT OF THE CASE

1. Since the founding of our nation, the constitution has been a cornerstone of the most basic principles this country affords every citizen to be free from arbitrary or tyrannical acts of the government. In the event of tyrannical actions upon a citizen, there are provided by constitutional right, ways a citizen can defend themselves in a court of law. That is, if they are fortunate enough to escape the grasp of the original illegal acts perpetrated upon them in the first place. If those constitutional and due process rights and opportunities are then again arbitrarily denied or ignored at a federal level, leaving no redress for the citizens to defend themselves; the tyranny is in fact the very nature and intent of the government itself to operate without justice for all. The Supreme Court noted that 'in the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment was proposed, provided that 'in all the courts of the United

States, the parties may plead and manage their own causes personally or by the assistance of counsel.

PETITIONER'S CASE

2. This instant suit was originally filed in Florida 6th Judicial Circuit Court, Civil Division on August 1, 2018. The documents (Summons, Notice of Lis Pendens, and Plaintiff's Complaint) were served on the Defendants on August 8, 2018. They appear in Appendix C to this Petition. This lawsuit was a complete surprise to the defendants because the defendants did not know that the Plaintiff had recorded any liens against the defendants' property in St. Petersburg, Florida. The Plaintiff did not serve the liens imposed against the Defendants' property on the Defendants.

3. Plaintiff's Complaint, ¶ 5 states "Venue is proper because the real property is located in Pinellas County and because the events complained of occurred in Pinellas County." Fla. Stat. § 47.011 states:

> "Actions shall be brought only in the county where the defendants resides, where the cause of action accrued, or where the property in litigation is located."

4. Plaintiff's Complaint, Count I is Foreclosure of Municipal Liens Imposed Against the Property. Count I, ¶ 8 states "Plaintiff is the owner and holder of the municipal assessment liens imposed against the property. Count I, ¶ 9 lists the liens by Book and Page numbers.

Fla. R. Civ. P. 1.110(b) states:

> "All pleading which set forth a claim for relief, ... must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, ..., (2) a short and plain statement of the

ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. ..."

Fla. R. Civ. P. 1.130 states:

"All bonds, notes, bills of exchange, contracts, accounts, or documents on which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, must be incorporated in or attached to the pleading...".

5. Venue is not proper because the defendants reside in another county that is over 200 miles away and the pleading did not state a cause of action that was accrued in Pinellas as is required by Fla. Stat. § 47.011.

6. Plaintiff's Complaint, Count I is Foreclosure of Municipal Liens Imposed Against the Property. Count I, ¶ 12 states "There have been no payments on any of the municipal liens." The Plaintiff did not serve the liens on the Defendants. The Defendants found out that the liens existed after they were served Plaintiff's Complaint. The Defendants got a copy of the liens by downloading them from the Pinellas County Clerk of the Circuit Court website. The Defendants could not make payments on liens when they did not know that they even existed.

7. Plaintiff's Complaint, Count I is Foreclosure of Municipal Liens Imposed Against the Property. Count I, ¶ 13 states "Plaintiff has also complied with all conditions precedent to the filing of this lawsuit or those conditions have otherwise been waived.

8. After reviewing the Plaintiff's complaint, the Defendants went on line and downloaded all the liens that had been recorded against their property by the Plaintiff. There was 7 "Code Enforcement Board Fines" liens, 1 "Utility Charges"

lien, and 26 "Special Assessment" liens. The 7 "Code Enforcement Board Fines" liens and 1 representative "Special Assessment" lien appear in Appendix D to this Petition.

9. "Code Enforcement Board" liens are statutory liens created by Fla. Stat. Ch. 162. This chapter, also known as the Local Government Code Enforcement Boards Act (Fla. Stat. § 162.01 ("Sections 162.01-162.13 may be cited as the Local Government Code Enforcement Board Act.")), provides for a quasi-judicial proceeding for code violations. Specifically, pursuant to Ch. 162, the code enforcement board or a special magistrate must hold a formal hearing on the alleged code violation, which includes presentation of testimony, evidence, and arguments prior to any action imposing fines or affecting individual rights. Code enforcement proceedings must follow fundamental due process requirements (Fla. Stat. § 162.07(3) ("Formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings.") See *Donaldson v. Clark*, 819 F.2d 1551, 1558 (11th Cir. 1987). Procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property interest (citing *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971)), *i.e.*, the respondent must receive notice and an opportunity to be heard before the imposition of any fines.

10. The prescribed quasi-judicial procedure, in essence requires notice and an opportunity to be heard before imposition of any fines that may become liens on real property upon proper recording in the public records. Defendants were not

noticed and Defendants were deprived of the opportunity to be heard before the imposition of the fines that became liens on Defendants' property.

11. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide "fair procedures".

12. A commitment to legality is the heart of all advanced legal systems, and the Due Process Clause often thought to embody that commitment. The clause also promises that before depriving a citizen of life, liberty or property, **government must follow *"fair procedures". Actions denying the process that is "due" would be unconstitutional.***

13. The Plaintiff imposed 7 fines for 3 Code Enforcement Board cases. The total amount of the 7 fines is $20,200.00. The Plaintiff did not record an order that name what the offense is, so the Defendants do not know the level of the severity of the offenses. The most expensive violation that Defendants ever corrected was for peeling paint. The Defendants brought the paint and paid a man $300.00 to Paint the exterior of the house. The fine is disproportionately large considering the severity of the violations. The fine is excessive and violated the Eight Amendment. In *U.S. v. Bajakajian,* 524 U.S. 321, 324 (1998), the court held that the fine was

disproportionately large considering the offense's level of severity, the fine was excessive and violated the Eighth Amendment.

14. In *Tyson Timbs v. Indiana,* 139 S. Ct. 682 (2019), the Supreme Court stepped in, ruling for Timbs and establishing that the Eighth Amendment's Excessive Fines Clause does extend to the states, via the Fourteenth Amendment's Due Process guarantees.

15. The imposition of the 7 "Code Enforcement Board" liens violates the Defendants' Fifth, Eighth, and Fourteenth Amendments rights.

16. "Special Assessment" liens are statutory liens created by Fla. Stat. Ch. 170. Specifically, Ch. 170 gives any municipality of the state the ***authority for providing improvements and levying and collecting special assessments against property benefited.*** Chapter 170 require:

- Special assessment be levied only for the purposes enumerated in Fla. Stat. § 170.01.
- When the governing authority of any municipality may determine to make any public improvement authorized by s. 170.01 and defray the whole or any part of the expense thereof by special assessments, said governing authority shall so declare the special assessment by resolution.
- Plans and specifications, with estimated cost of proposed improvement required before adoption of resolution.
- Publication of resolution.
- Preliminary assessment roll.
- Publication of preliminary assessment roll.
- Final consideration of special assessments; equalizing board to hear complaints and adjust assessments; rebate of difference in cost and assessment.

17. The Plaintiff's Codes Compliance Assistance Department has a document on its website titled "Enforcement Steps". It appears in Appendix E to this Petition. The document lists the steps in 4 methods of Code Enforcement. The

"Abatement" method is the only one that does not afford the property owner any due process. The "Abatement" method states "The following violations may be abated by the City and the cost of the work charged against the property in the form of a Special Assessment Lien: Overgrowth; Unsecured Vacant Structures; Bees; Outdoor Storage on Vacant Lots; Hazardous Trees."

18. Fla. Stat. § 60.05 governs how any nuisance as defined in Fla. Stat. § 823.05 will be abated. Trespassing on private property to perform property maintenance and charging the property owner in the form of a "Special Assessments" lien does not comply with s. 60.05.

19. The Plaintiff imposed 26 "Special Assessment" liens against the Defendants' property for ***abatement of alleged code violations.*** Abatement of alleged code violations is not a purpose enumerated in Fla. Stat. § 170.01. The Plaintiff did not satisfy the Chapter 170 requirements for levying a Special Assessment. The 26 "Special Assessment" liens are fraudulent liens because no valid Chapter 170 special assessment were ever levied.

20. "Affidavit of Plaintiff in Support of the City's Motion for Summary Judgement and in Opposition to Defendant's Counterclaims" ¶ 5 states "Contrary to the assertions of Defendant, Plaintiff is legally authorized to issue special assessments under the city's municipal code. These assessments are not governed by the procedures and restrictions of Chapter 170, Florida Statutes as asserted by Defendant."

21. Florida Attorney General Advisory Legal Opinion number AGO 94-57 states "... Pursuant to Article VIII, Section 2, Florida Constitution, as implemented

by Chapter 166, Florida Statutes, municipalities in Florida have been granted broad home rule powers.... However, while a municipality possesses home rule powers, it may not act in conflict with the provisions of state law. For example, the court in *City of Miami Beach v. Rocio Corporation,* 404 So.2d 1066 (Fla. 3d DCA 1981), while recognizing that concurrent legislation may be enacted by both the state and local government in areas not preempted to the state, concluded that such concurrent legislation enacted by municipalities may not conflict with state law. If such conflict arises, state law prevails.... And see *Thomas v. State,* 614 So.2d 468 (Fla. 1993) (municipal ordinances are inferior to state laws and must not conflict with any controlling provisions of statute).

22. The imposition of the 26 "Special Assessment" liens violates Fla. Stat. § 817.535 – Unlawful filing of false documents or records against real or personal property. The actions are unconstitutional.

23. The Defendants filed Defendants' Answer, Affirmative Defenses, and Counterclaim on August 24, 2018.

24. On August 29-30, 2018, the Plaintiff filed (1) Plaintiff's Motion to Dismiss Defendants' Counterclaim, or, in the Alternative, for More Definite Statement; (2) Plaintiff's Motion to Strike Defendants' Jury Trial Demand; (3) Plaintiff's Motion to Strike Defendants' Affirmative Defenses; and (4) Plaintiff's Notice of Hearing scheduled for September 20, 2018 on the 3 Plaintiff's Motions.

25. The Defendants filed Defendants' Motion to Dismiss Plaintiff's Complaint on September 10, 2018. The Defendants did request a hearing for the Motion at the time the Motion was filed.

26. The Defendants did not attend the September 20, 2018 hearing for medical reasons and the hardship that the more than 430 miles roundtrip drive would cause the 69 years old couple.

27. The Defendants received the proposed order from the Plaintiff's lawyer by mail on September 27, 2018. The order listed the court's ruling on the Plaintiff's 3 Motion. It appears in Appendix F to this Petition.

28. The Defendants received a copy of the proposed order that was sent to the Judge from the Plaintiff's lawyer by mail on October 1, 2020. The order listed the court's ruling on the Plaintiff's 3 Motion and the Defendants' Motion to Dismiss, which was not noticed and heard. It appears in Appendix F to this Petition.

29. The Judge signed the Order on September 27, 2018. It appears in Appendix F to this Petition.

30. The actions described in ¶¶ 30-31 is Fraud on the Court. "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. "*Kenner v. C.I.R.*, 387 F.3d 689 (1968); Moore's Federal Practice, 2d ed., p. 512 ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud

upon the court is **not in essence a decision at all, and never becomes final.**" Under Federal law, when any officer of the court has committed "fraud upon the court", the orders and **judgment of that court are void, of no legal force or effect.**

31. The Plaintiff mailed a copy of "Plaintiff's Motion for Summary Judgment" and "Plaintiff's Notice of Hearing" on October 12, 2018. Fla. R. Civ. P. 1.510 governs motions for summary judgment. Fla. R. Civ. P. 1.510(c) states:

> "The motion must state with particularity the grounds on which it is based and the substantial matters of law to be argued and must specifically identify any affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence ("summary judgment evidence") on which the movant relies. The movant must serve the motion at least 20 days before the time fixed for the hearing, and must also serve at that time a copy of any summary judgment evidence on which the movant relies that has not already been filed with the court...."

32. The Plaintiff did not serve Plaintiff's summary judgment evidence at the time the Plaintiff served Plaintiff's Motion for Summary Judgment. The Hearing for the motion was fixed for October 23, 2018, which was less than 20 day after serving the motion, in St. Petersburg, Florida. On October 18, 2018, Defendant Leroy E. Scott called the Judge's Judicial Assistant, Suzy Isaksen, and requested that the Hearing be rescheduled. Ms. Isaksen told Defendant Leroy that the defendants could attend the hearing by telephone. Defendant Leroy told Ms. Isaksen that the Defendants could not properly prepare for the October 23, 2018 hearing. Ms. Isaksen said that she will call Mr. Weidner, the Plaintiff Counsel, and talk with him about rescheduling the hearing for 2 weeks later. The Hearing was

rescheduled with attendance by telephone on October 30, 2018, which is still less than 20 days after serving the Motion for Summary Judgment.

33. In light of the foregoing, the Defendants had a well-reasoned fear that the Judge not set aside his personal bias and be fair at further hearings in this case. The Defendants mailed "Motion to Disqualify Judge" to Judge Jack Day on October 24, 2018.

34. The Plaintiff filed 2 untimely affidavits approximately 1 hour before the scheduled summary judgment hearing on October 30, 2018. The affidavits were "Affidavit of Code Enforcement Liens in Support of the City's Motion for Summary Judgment" and "Affidavit of Special Assessment Liens in Support of the City's Motion for Summary Judgment". Both of the affidavits are affidavits of indebtedness when the affiants relied on data from a computer system. The Florida Fourth District Court of Appeal issued an opinion in *Glarum v. LaSalle Bank Nat'l Ass'n.* – 2011 Fla. App. LEXIS 14039; 2011 WL 3903161 (Fla. Dist. Ct. App. 4th Dist., Sept. 7, 2011), "The court held that an affidavit of indebtedness of a "specialist" at a loan servicer that relied on data from a computer system was inadmissible hearsay. Both of the Plaintiff's affidavits are inadmissible hearsay. The affidavits do not satisfy Fla. R. Civ. P. 1.510(c) requirements for summary judgment evidence. This is the only summary judgment evidence that the Plaintiff filed.

35. The Defendants appeared at the October 30, 2018 hearing telephonically. Judge Jack Day informed the parties that Defendants' Motion to Disqualify Judge

was file on October 26, 2018 and he could not proceed with the summary judgment hearing. Judge Day issued an "Order Denying Defendants' Motion to Disqualify Judge and Scheduling Rehearing on Motion to Dismiss" on November 5, 2018. It appears in Appendix G to this Petition.

36. The Defendants appeared at the November 9, 2018 Motion to Dismiss hearing telephonically. The Motions to Dismiss was again denied. Judge Day said because the Defendants had raised Defenses, he would give the Defendants 30 days after the Order is signed to file their Amended Answer, Affirmative Defenses and Counterclaim. Judge Day also said that he was retiring in December 2018 and the case would be assigned to another Judge. The Order was signed on December 4, 2018. It appears in Appendix H to this petition.

37. The Defendants filed "Defendants Answer and Affirmative Defenses" on December 31, 2018; "Defendants' Counterclaim" on January 3, 2019; "Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment" on January 9, 2019; and "Defendants' Motion to Compel Discovery" on January 15, 2019.

38. On March 11, 2019, the Plaintiff filed "Notice of Hearing on March 19, 2019 for Plaintiff's Motion for Summary Judgment". On March 14, 2019, the Defendants filed "Defendants' Request for Production". On March 17, 2019, the Defendants filed "Amended Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment". On March 19, 2019, the Defendants' Affidavit in Support of Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment". On March 19, 2019, approximately 1 hour before the March 19, 2019

hearing, the Plaintiff filed "Affidavit of Plaintiff in Support of the City's Motion for Summary Judgment and in Opposition to Defendant's Counterclaim".

39. The Defendants appeared at the March 19, 2019 hearing telephonically. At the beginning of the hearing, Judge Thomas Ramsberger told the Defendants that he was GRANTING the Plaintiff's Motion for Summary Judgment. The Petitioner responded to Judge Ramsberger that the Plaintiff's 2 affidavits do not prove that there are no genuine dispute of material facts. Judge Ramsberger said that the Plaintiff had 80 "Notices" that prove that there are no genuine issues of material facts. The Petitioner responded that the Defendants had filed a "Request for Production" and the Plaintiff had not provided the Plaintiff's summary judgment evidence. The Plaintiff's Counsel, Matthew Weidner, said that he had emailed the "Notices" to us the day before the hearing. The Plaintiff filed "Plaintiff's Response to Request for Production of Documents" on March 20, 2019, the next day after the hearing. The Petitioner told Judge Ramsberger that he had filed Amended Answer and Affirmative Defenses. Judge Ramsburger respond was "you filed a Motion to Disqualify Judge Jack Day. Bring your Affirmative Defense evidence to a hearing in St. Petersburg." Judge Ramsberger did not file an Order for his rulings on this hearing. The Plaintiff filed a "Notice of Hearing" for a hearing on April 17, 2017.

40. The Defendants never did receive the Plaintiff's summary judgment evidence that Judge Ramsberger said the Plaintiff had. On April 17, 2019, the Defendants filed "Affidavit Setting Forth Such Facts and Exhibits as would be

Admissible in Evidence as Defendants' Summary Judgment Evidence" before appearing in Court for the hearing.

41. The hearing was scheduled to start at 3:30p.m.. Due to heavy construction on the highways, the Petitioner did not arrive in St. Petersburg until 3:30p.m.. The Petitioner called the Court telephone number on the notice to tell the Judge that he was on the way and that he would be late. The call was not answered and it did not go to voicemail. After finding parking at the Court house and going through Court security, the Petitioner entered Judge Ramsburger's Judicial Assistant's office at 3:55p.m.. The Judicial Assistant told the Petitioner that Mr. Weidner had left 10 minutes before the Petitioner arrived, that Judge Ramsburger had signed the FINAL JUDGMENT, and the Defendants' property is scheduled to be sold on May 22, 2019. FINAL JUDGMENT appears in Appendix I to this Petition.

42. The Defendants filed "Motion for Rehearing" and "Affidavit in Support of Defendants' Motion for Rehearing" on May 1, 2019. An Order granting Rehearing was filed on May 9, 2019. It appears in Appendix J to this Petition.

43. The Plaintiff file "Notice of Hearing on May 21, 2019 for Rehearing on Plaintiff's Motion for Summary Judgment" on May 15, 2019.

44. The Petitioner attended the Rehearing in St. Petersburg, in person. The Petitioner argued that the Plaintiff's affidavits in Support of Motion for Summary Judgment would not be admissible in evidence because they are hearsay evidence and additionally, they were not timely filed pursuant Fla. R. Civ. P. 1.510(c). The

Plaintiff's counsel argued that the Defendants' affidavit was untimely. Judge Ramsberger said to be fair to both parties he would cancel the sale; deem all affidavits timely; and hear the case again as if it was a new case. Judge Ramsberger did not vacate "Final Judgment of Foreclosure" order.

45. The Defendants' property was sold on May 22, 2019. The Petitioner called the Judge and spoke with his Judicial Assistant. The Petitioner told the Judicial Assistant that Judge Ramsberger said in the May 21, 2019 rehearing that he would cancel the sale. She said that she will talk to Judge Ramsberger and call me back. She called back and said that she had talked to Judge Ramsberger and he will issue an order vacating the sale.

46. An "Order Vacating Foreclosure Sale" was filed on May 23, 2019. It stated:

"**THIS CAUSE**, came before the Court May 21, 2019, for hearing upon the Defendant's Emergency Motion for Reconsideration, Motion to Vacate Order of Summary Final Judgment and Motion to Cancel the May 22, 2019 Foreclosure Sale, filed on May 16, 2019. The Court having reviewed said Motion, the Court file, hearing testimony of the parties, and being otherwise fully advised in the premises, it is thereupon;

ORDERED AND ADJUDGED as follows:
1. The Defendant's Motion for Re-hearing/Reconsideration is **GRANTED.**
2. The Defendant's Motion to Vacate Order of Summary Final Judgment is DENIED.
3. A re-hearing is scheduled for Monday, June 17, 2019 at 2:30p.m. It is therefore; **ORDERED** that the Foreclosure Sale on May 21, 2019, is hereby VACATED."

The order had the wrong Foreclosure Sale date on it. An amendment for filed on May 28, 2019. They appear in Appendix K to the Petition.

47. The Defendants' "Pro Se Emergency Motion to Vacate Final Judgment of Foreclosure and Cancel Foreclosure Sale" filed on May 16, 2019 was never "Noticed and Heard". The Defendants did not file a motion for another rehearing. Judge Ramsberger said that he was cancelling the sale because he will deem all affidavits timely and will schedule a new hearing.

48. "Order on Defendant's Motion for Rehearing and Plaintiff's Motion for Summary Judgment" was filed on June 6, 2019. This is the Order where Judge Ramsberger ruled on the May 21, 2019 Rehearing. It appears in Appendix L to this Petition.

49. Paragraph 2 of the Order says that the original summary judgment hearing took place on April 17, 2019. This is not true. The original hearing was scheduled for October 30, 2018. The Plaintiff's filed its affidavits approximately 1 hour before the time scheduled for the hearing on October 30, 2018. At beginning of the hearing, Judge Jack Day told the parties that the hearing would not proceed because the Defendants had filed a Motion to Disqualify Judge. The hearing was again scheduled for March 19, 2019. This hearing proceeded, but no order was issued on Judge Ramsberger's ruling. The motion was filed on October 12, 2018. The Plaintiff did not file its affidavits at the time it filed the motion at least 20 days before the hearing as required by Fla. R. Civ. P. 1.510(c).

50. Paragraph 3 of the Order says that affidavit in opposition to summary judgment must be filed and served no less than five (5) days prior to the date of the hearing. Fla. R. Civ. P. 1.510(c) says 5 days by mail or 2 days electronically. The

defendants filed electronically. "The moving party, who is generally the lender or plaintiff, bears the burden of proving the non-existence of genuine issues of material fact. Furthermore, the burden of proving that such issues exist does not shift to the non-moving party until the movant has successfully met his burden. *Nard, Inc. v. DeVito Contracting & Supply, Inc.*, 44 So.2d 1138 (Fla. 2d DCA 2000)." The Plaintiff did not meet its burden for proving the non-existence of genuine issues of material fact. The burden of proving the non-existence of genuine issues of material fact should not been shifted to the Defendants. The Defendants are in violation of the Rule because Judge Ramsberger told the Petitioner to bring his summary judgment evidence to the hearing.

51. Paragraph 4 says that "The "Court... finds it would be equitable and hereby orders that all affidavits filed on or before April 17, 2019, are hereby deemed to be timely filed for the purpose of the next summary judgment hearing set for Monday, June 17, 2019 at 2:30p.m." This Court is making law. A Trial Court cannot make law. A Trial Court must follow established law. This ruling is not equitable for the Defendants. The Florida Rule was violated. The Final Judgment of Foreclosure should have been vacated.

> "Act in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process." *Cannon v. Commission on Judicial Qualifications,* (1975) 14 Cal. 3d 678, 694

52. A 5 minute hearing was held on June 17, 2019 in Judge Ramsberger's courtroom in St. Petersburg, Florida. "Order on Defendants' Motion for Rehearing

and Resetting Foreclosure Sale" was filed on July 11, 2019. It appears in Appendix M to this Petition.

53. Paragraph 1 states "this court CONFIRMS the entry of the Final Judgment previously entered on 4/17/19." This Court is acting as an Appellate Court, not a Trial Court, when it confirmed its own order.

54. Paragraph 3 states "Plaintiff asserted that the Affidavit should not have been considered because it was untimely submitted pursuant to Fla.R.Civ.Pro. 1.510(c) and because Defendants failed to designate what evidence this court should rely upon to deny summary judgment. The court acknowledges that it was submitted 4/17/19, that it was not in fact timely submitted and that the Defendant did not designate any evidence this court should rely upon in opposition to summary judgment." Paragraph 4 of the order filed on June 6, 2019 says that "The "Court... finds it would be equitable and hereby orders that all affidavits filed on or before April 17, 2019, are hereby deemed to be timely filed for the purpose of the next summary judgment hearing set for Monday, June 17, 2019 at 2:30p.m." This is not fair. Both parties' affidavits were untimely. Only the Defendants are being penalized.

> "The rule of equality ... requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances". *Kentucky Railroad Tax Cases,* 115 U.S. 321, 337 (1885)
>
> "Due process of law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government." *Duncan v. Missouri,* 152 U.S. 377, 382 (1894)

55. Paragraph 3 states "Plaintiff next asserted that the document submitted by Defendant was styled as an "affidavit", the court should not consider the document filed as an affidavit because while it was signed it was not notarized. The court acknowledges that the "affidavit" was not signed and was therefore not admissible as evidence in opposition to Summary Judgment." Evidence submitted in connection with summary judgment does not have to be presented in an admissible form. The trial court may consider the evidence on summary judgment provided the submitting party demonstrates that it would be possible to present the evidence in admissible form at trial.

> "Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers." *Jenkins v. McKeithen,* 395 U.S. 411, 422 (1959); *Picking v. Pennsylvania R. Co.,* 151 F.2d 240, Third Circuit Court of Appeals; *Pucket v. Cox,* 456 F.2d 233 (1972) (6th Cir. USCA)

56. Paragraph 4 states "The Plaintiff next argued that Defendants failed to raise any issues of disputed material facts because the Defendants failed to timely appeal the liens that were at issue in this case. The court acknowledges that the failure to appeal the liens at issue in this case precludes this court from considering many of the issues raised by Defendant in this case." The Defendants found out that there were liens recorded against their property when they were served this lawsuit. The Plaintiff did not comply with the law and timely serve the liens on the Defendants.

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law are bound to obey it." *U.S. v. Lee,* 106 U.S. 196, 220 1 S. Ct. 240, 261, 27 L. Ed 171 (1882)

57. The Defendants file "Notice of Appeal" on July 22, 2019. It was just signed by the Petitioner. The Defendants received a letter for the Pinellas County Clerk of Circuit Court. The letter said that because Petitioner was not a lawyer, Petitioner could not represent his wife. Petitioner filed an "Amended Notice of Appeal" on July 26, 2020 that he and his wife both signed. There was another filing fee for the "Amended Notice of Appeal".

> "Members of groups who are competent non-lawyers can assist other members of the group achieve the goals of the group in court without being charged with "unauthorized practice of law." *NAACP v. Button,* 371 U.S. 415; *United Mineworkers of America v. Gibbs,* 383 U.S. 715; and *Johnson v. Avery,* 89 S. Ct. 747 (1969)"

58. The Pinellas County Clerk of Circuit Court mailed the "Appeals Master Index – Original Record on Appeal" to the Petitioner on September 4, 2019. The Petitioner reviewed the master index and found that numerous files were missing that Petitioner need for the Appeal. The Petitioner filed "Appellants' Motion to Correct and Supplement the Record" on September 10, 2019. The granted that motion on September 26, 2019. It appears in Appendix N to this Petition. The Pinellas County Clerk of Circuit Court mailed the "Appeals Supplemental Index of Record on Appeal" to the Petitioner on October 8, 2019.

59. Fla. R. App. P. 9.200(d)(4) states:

"The court shall upload the electronic record to the electronic filing (e-filing) system docket. Attorneys and those parties who are registered users of the court's e-filing system may download the electronic record in their case(s)."

The Petitioner is a registered user of the court's e-filing system. The Petitioner downloaded the Original and Supplemented Record. The Petitioner found that the Record was not in compliance with the requirements of Fla. R. App. P. 9.200(d)(1)(B). The pages in the Original Record were not numbered. The Petitioner used the page numbers displayed by the PDF reader for reference in the Initial and Reply Briefs. It is not known if the page numbers displayed by the PDF reader exactly match the pagination of the index.

60. Fla. R. App. P. 9.200(f)(3) states:

"If the court finds that the record is not in compliance with the requirements of subdivision (d) of this rule, it may direct the clerk of the lower tribunal to submit a compliant record, which will replace the previously filed noncompliant record."

There is nothing to suggest that the court found that the record was noncompliant and directed the clerk of the lower tribunal to submit a compliant record. It make the Petitioner question if the Petitioner was penalized because the Record was noncompliance and it caused the Appellate Judges some extra work.

REASONS FOR GRANTING THE PETITION

I. This Court should grant Writ of Certiorari because there was Judicial Bias in the case.

61. Some rules express a preference for resolution of every case on the merits, even if resolution requires excusing inadvertence by a pro se litigant that

would otherwise result in a dismissal. The Judicial Council justifies this position based on the idea that "Judges are charged with ***ascertaining the truth,*** not just playing referee... A lawsuit is not a game, where the party with the cleverest lawyer prevails **regardless of the merits.**" *Ibid* (quoting Gamet v. Blanchard). It suggests "*the court should take whatever measures may be* ***reasonable and necessary to insure a fair trial***".

JUDICIAL STANDARD

62. Federal Summary Judgment Standard. Fed.R.Civ.P. 56 governs motions for summary judgment. The following is typical language used in opinions articulating the standard, under current law, for testing the sufficiency of a motion for summary judgment.

> It is appropriate for the Court to grant summary judgment if the pleadings, discovery materials, and any affidavits before the Court show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *See* Fed.R.Civ.P. 56(a) made applicable to the adversary proceeding by Fed. R. Bankr.P. 7056. "[A] party seeking summary judgment always bears the initial responsibility of informing the ... court of the basis for its motion, and ... [must] demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Courts must review the evidentiary materials submitted in support of a motion for summary judgment to ensure that the motion is supported by evidence. If the evidence submitted in support the summary judgment motion does not meet the movant's burden, then the motion for summary judgment must be denied.
>
> In *Anderson v. Liberty Lobby,* 477 U. S. 242 (1986), the Court held that [1] only disputes over facts that might legitimately affect the outcome are material under Rule 56; [2] the test for determining whether a genuine issue of material fact exists is the same as the test for granting a directed verdict; [3] in applying that test, the court must view the evidence in the light most

> favorable to the nonmovant and assess its sufficiency according to the evidentiary burden imposed by the controlling substantive law

63. As defined in the federal rules of civil procedure, the standard for summary judgment is the same in every jurisdiction: *The court grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.* Let's unpack this standard:

- **Fact**: a statement made or action taken. Facts are things that happened. Thoughts, gossip, opinions, statutes and court rulings are not facts.
- **Material**: something that matters. All facts aren't relevant to a case. The terms of a loan are relevant to a debt collection case, but the arrangement of the planets on the date of the loan is not.
- **Genuine dispute**: contradictory evidence. Denying a fact is not enough to dispute it unless the denial comes in an affidavit or other evidence containing an opposing fact.
- **Matter of law**: the components of a claim as defined in statutes and appellate court decisions. For instance, the typical elements of fraud are that facts have been misrepresented, that the misrepresented facts were material to a transaction, that those facts were intended to be relied upon, that the defrauded party justifiably relied upon those facts, and that material harm resulted from that person's reliance on the misrepresented facts. When the evidence showing each of these elements is undisputed, the defrauded party can successfully move for summary judgment.

64. Florida Summary Judgment Standard. Fla. R. Civ. P. 1.510 governs motions for summary judgment. The following is typical language used in opinions articulating the standard, under current law, for testing the sufficiency of a motion for summary judgment.

> To determine whether a genuine issue of material exists, the court must view every possible inference in favor of the non-moving party. *Maynard v. Household Finance Corp. III,* 861 So.2d 1204 (Fla. 2d DCA 2003). The non-

moving party is generally the homeowner or defendant. The moving party, who is generally the lender or plaintiff, bears the burden of proving the non-existence of genuine issues of material fact. Furthermore, the burden of proving that such issues exist does not shift to the non-moving party until the movant has successfully met his burden. *Nard, Inc. v. DeVito Contracting & Supply, Inc.,* 44 So.2d 1138 (Fla. 2d DCA 2000).

The Third District Court of Appeals of Florida held that "the party moving for summary judgment must factually refute or disprove the affirmative defenses raised, or refute or disprove the affirmative defenses raised, or establish that the defenses are insufficient as a matter of law." *Leal v. Deutsche Bank National Trust Company,* 21 So.3d 907, 909 (Fla. 3d DCA 2009). The plaintiff must either factually refute the alleged affirmative defenses to foreclosure or establish that they are legally insufficient to defeat summary judgment. *Knight Energy Services, Inc. v. Amoco Oil Co.,* 660 So.2d 786 (Fla. 4th DCA 1995). In a recent decision from the Fourth District Court of Appeal (DCA) of Florida, the Fourth DCA held that "when a party raises affirmative defenses, a summary judgment should not be granted where there are issues of fact raised by affirmative defenses which have not been effectively challenged and refuted factually." *Alejandre v. Deutsche Bank Trust Co.,* 44 So.3d 1288, 1289 (Fla. 4th DCA 2010).

65. The Plaintiff file 2 affidavits for its summary judgment evidence.

- The "Affidavit of Code Enforcement Liens in Support of the City's Motion for Summary Judgment" states:

> "I am employed by the City of St. Petersburg ("the City"). My job duties require me to research, maintain, and keep a tally of liens and owing to the City for collection purposes. I therefore have personal knowledge regarding the outstanding principal balances of the liens described in the complaint and this affidavit."

- The "Affidavit of Special Assessment Liens in Support of the City's Motion for Summary Judgment" states:

> "I am employed by the City of St. Petersburg ("the City"). My job duties allow me to all special assessment liens due and owing to the City for collection purposes. I therefore have personal knowledge regarding the outstanding

principal balances of the special assessment liens described in the complaint and this affidavit."

Neither of the affiants have personal knowledge of the facts that matter. The Plaintiff's summary judgment evidence do not demonstrate the absence of a genuine issue of material fact. Therefore, the Plaintiff's summary judgment evidence is insufficient and the summary judgment should not have been granted.

66. The Judicial Bias is described in paragraphs 39 thru 60 of this Petition. The trial court's proceedings did not satisfy the Fifth Amendment and Fourteenth Amendment rights to Due Process and Equal Protections of the Laws.

II. This Court should grant Writ of Certiorari because the Petitioner demanded a jury trial which is a guaranteed by Amendment VII of the Constitution; but that right is being denied time and again to obstruct justice.

67. The value of the controversy in this case exceeded $30,000.00. The petitioner demanded a jury trial. The Plaintiff filed a motion to strike the demand for a jury trial. The Plaintiff's motion was granted. Furthermore, the granting of a motion for summary judgment deprived the Defendants of a jury trial that is guaranteed by Amendment VII.

III. This Court should grant Writ of Certiorari because the Plaintiff imposed over $20,000.00 in fines for severity of offenses that were less than $1000.00.

68. The violation of Amendment VIII is described in paragraphs 13 thru 15.

IV. This Court should grant Writ of Certiorari because the Plaintiff trespassed on Defendants to perform unlawful ABATEMENTs.

69. The trespass and violation of Amendment IV are described in paragraph 16 thru 19.

V. This Court should grant Writ of Certiorari because the case involves important issues of federal and constitutional law worthy of review by the U. S. Supreme Court.

70. This Court granted review of two similar cases where the Second and Fifth DCAs affirmed in a per curiam decision. Like this case, both cases had constitutional violations.

> "In *Hobbie v. Unemployment Appeals Commission of Florida,* 480 U.S. 136, 138, 139, 146 (1987), the U.S. Supreme Court reversed a per curiam decision. In *Hobbie,* the employer fired Hobbie when she refused to work certain hours due to religious convictions developed after she began her employment. When the employer contested Hobbie's unemployment-compensation claim, she sued. Following an unsuccessful appeal to the Fifth DCA, Hobbie appealed directly to the U.S. Supreme Court, which reversed the per curiam affirmance and noted that the denial of benefits to the appellant violated the Free Exercise Clause of the First Amendment.
>
> Similarly, in *Palmore v. Sidoti,* 466 U.S. 429, 430-432, 434 (1984), a mother was denied custody of her child solely because she lived with and then remarried an African-American man. The trial court verified that there was no question about the parental abilities of the mother, and instead stated that its decision was based on the mother's choice of a lifestyle that placed her own gratification ahead of her child's welfare. The Second DCA affirmed in a per curiam decision. The U.S. Supreme Court reversed, noting that the trial court's reasoning did not satisfy the Fourteenth Amendment prohibition against discrimination."