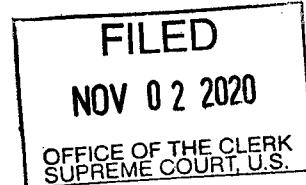


20-615
No. _____

ORIGINAL



IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

PETRA MARTINEZ, STAN
ATKINSON,

Petitioners,

v.

AMERICA'S WHOLESALE LENDER,
a dissolved New York corporation,

Respondent.

9th Cir. No.: 19-16268

(U. S. D. C., N. D. Cal. No. 5:18-cv-
02869-LHK (N. D. Cal. 2019))

PETITION FOR WRIT OF CERTIORARI.

On Petition for Writ of Certiorari from the Judgment
Of the United States Court of Appeals
For the Ninth Circuit.

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QUESTIONS PRESENTED.

1. Is the Opinion below in conflict with the opinions of the Courts of the State of New York in that Respondent America's Wholesale Lender is a dissolved New York corporation ineligible to file it's Notice of Removal with the District Court?
2. Is the Opinion below in conflict with the opinions of this Court in that the Action below is not subject to claim preclusion?

CORPORATE DISCLOSURE STATEMENT.

Respondent America's Wholesale Lender is a dissolved New York corporation, effective June 29, 2016. No other Documents have since been filed with the Secretary of State of the State of New York showing that it has since been revived, merged, or any other action showing that it legally exists in some form.

LIST OF EXISTING CASES.

In order to determine recusal, Petitioners state the following cases that has been filed involving Petitioners and Respondent:

Atkinson v. America's Wholesale Lender, Monterey Superior Court Case No. 18CV000117; removed.

Atkinson v. America's Wholesale Lender, United States District Court, Northern District of California, Case No. 5:18-cv-02869-LHK; Judgment against Petitioners.

Atkinson v. America's Wholesale Lender, Ninth Circuit No. 18-17058; reversed and remanded.

Atkinson v. America's Wholesale Lender, Ninth Circuit No. 19-16268; affirmed.

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CITATIONS.

The Judgment was granted against Petitioners in the case of *Atkinson v. America's Wholesale Lender*, Ninth Circuit No. 19-16268 (2020), dated June 9, 2020, and is unreported.

STATEMENT OF JURISDICTION.

The District Court had proceeded pursuant to 28 U. S. C., §1441(b). The Ninth Circuit had jurisdiction pursuant to 28 U. S. C., §1291. This Court has jurisdiction pursuant to 28 U. S. C., §1254(1). Petitioners are seeking to review the Judgment, entered on June 9, 2020 (Apx. 1a-3a).

STATUTORY PROVISIONS.

United States Code, 28 U. S. C., §1441; Federal Rule of Civil Procedure 11; New York Tax Law §203-a (Apx. 30a-31a).

STATEMENT OF THE CASE.

Certified letters from New York Department of State and California Secretary of State indicate that Respondent AMERICA'S WHOLESALE LENDER was not a corporation in New York or California in 2006; said Respondent was incorporated in New York in 2008, and finally dissolved on June 29, 2016 (Dock. No. 1, pp. 45-46, Apx. 12a-13a).

In addition, it was discovered that Respondent AMERICA'S WHOLESALE LENDER had no business license, authorizing the lending of money, had no bank account. It lent no money to the Petitioners, and that it did not record a Fictitious Business Name Statement in the County of Monterey.

On May 16, 2018, Respondent removed the Action to District Court (Dock. No. 1).

The Action was dismissed by the District Court, but the Ninth Circuit ruled in Ninth Circuit No. 18-17058 (Apx. 9a-11a) that "We are unable on this record to

make a determination as to whether diversity jurisdiction existed"; "We therefore vacate the district court's judgement and remand for further proceedings".

On June 12, 2019, despite the fact the record showed that Respondent AMERICA'S WHOLESALE LENDER had not revived (Dock. No. 1, pp. 45-46). The District Court ruled against Petitioners (Apx. 5a-8a), and entered Judgment against Petitioners (Apx. 4a).

On June 9, 2020, the Ninth Circuit affirmed (Apx. 1a-3a).

REASONS FOR GRANTING THE WRIT.

I. THE NINTH CIRCUIT IS IN CONFLICT WITH THE COURTS OF THE STATE OF NEW YORK IN THAT RESPONDENT WAS A NEW YORK CORPORATION THAT WAS DISSOLVED ON JUNE 26, 2016, AND NEVER REVIVED, MAKING IT INELEGIBLE TO FILE A NOTICE OF REMOVAL OF PETITIONERS' COMPLAINT IN THE DISTRICT COURT ON MAY 16, 2018.

Respondent America's Wholesale Lender was not a New York corporation in 2006. It executed a Deed of Trust with Petitioners in 2006 for a loan on their house. Respondent has since been dissolved twice; the last time it was dissolved on June 26, 2016. It was never revived. Yet strangers to this dissolved New York corporation filed their Notice of Removal to the District Court. The District Court did not have any jurisdiction in removal to make any decision against Petitioners and rule against them. It does not matter who it is, even if it was another Bank that used to help immigrants in California in the 1930's.

Because for citizenship purposes, eligibility to participate in removing a case to District Court is contingent on the laws of the State where the corporation was incorporated, i. e., New York. If Respondent was dissolved as a corporation, it is *mortem-DEAD!* In civil cases, a person who becomes dead, cannot have any standing by himself, because he is dead, he is not breathing, and unless the dead is

embalmed in formaldehyde, he started to decay. The Notice of Removal was filed by interlopers, strangers to Respondent. The Secretary of State of the State of New York has not rescinded the dissolving of Respondent. Respondent's Notice of Removal, unless done by Lazarus or Jesus Christ is a ***NULLITY and VOID AB INITIO***. The District Court has no jurisdiction to hear the illegally removed case from the Superior Court of Monterey County, California.

The case of *Centurion Capital Corp. v. Guarino*, 35 Misc. 3d 1219 (N.Y. Civ. Ct. 2012), explains that:

“A check of the New York Department of State—Division of Corporations records reveals that there once was a domestic corporation in New York called Centurion Capital Corporation, however, it was declared “Inactive” and dissolved by proclamation with its authority annulled on June 24, 1992. A dissolution by proclamation is issued when a corporation is delinquent in its tax obligations to New York State for a period of two years [Tax Law § 203-a]. Such a corporation is “legally dead” [*41 East 1st Street Rehab Corp. v. Lopez*, 26 Misc.3d 990 (2009)].

“...

“Based on these facts and case law, due process requires that this judgment should be vacated and the case dismissed. The plaintiff filed more than 13,700 cases in New York City Civil Court and in all of them, as this one, lacked the legal capacity to bring and maintain any of those actions. The fact that the plaintiff corporation is neither an authorized domestic corporation nor an authorized foreign corporation makes this underlying action defective.”

The Notice of Removal was not authorized under 28 U. S. C., §1441(b), and Federal Rule of Civil Procedure 11, because it is legally ***DEAD!*** Just like the dead people in HBO’s “Six Feet Under”, Respondent America’s Wholesale Lender should be held *in Memoria* for being dissolved for not paying taxes under New York law. It has no legal capacity to remove any case. Because of these reasons, the District Court lacked jurisdiction in hearing case that was illegally removed,

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and the case should be remanded to both the Ninth Circuit and District Court to in turn remand the case back to the Superior Court of the State of California, in and for the County of Monterey.

II. THE NINTH CIRCUIT IS IN CONFLICT WITH THE DECISIONS OF THIS COURT IN THAT BECAUSE OF THE LACK OF CAPACITY, PETITIONERS MAY STILL PURSUE THEIR ACTION, AND THE MOTION TO DISMISS SHOULD HAVE BEEN DENIED.

Cases such as *Centurion Capital Corp. v. Guarino*, 35 Misc. 3d 1219 (N.Y. Civ. Ct. 2012), still make the Notice of Removal void. Respondent still cannot be resuscitated in the District Court like a stiff, deceased body. Why apply claim preclusion when the Notice of Removal is void? Respondent should have left Petitioners alone, not foreclosed upon them. Petitioner's Complaint alleged that Respondent, a trade name in 2006 and a dissolved New York corporation as of June 29, 2016, could not do business and foreclose upon Petitioners.

Certified letters from New York Department of State and California Secretary of State indicate that Respondent AMERICA'S WHOLESALE LENDER was not a corporation in New York or California in 2006; said Respondent was incorporated in New York in 2008, and finally dissolved on June 29, 2016 (Dock. No. 1, pp. 45-46). Therefore, the Complaint started new Causes of Action based on the Order of Dissolution. Respondent cannot argue against the use of the Order of Dissolution and argue claim preclusion. The case of *Lucky Brand Dungarees, Inc., v. Marcel Fashions Group, Inc.*, https://www.supremecourt.gov/opinions/19pdf/18-1086_new_5ifl.pdf, at p. 9 (2020), explains that:

“Not only that, but the complained-of conduct in the 2011 Action occurred after the conclusion of the 2005 Action. Claim preclusion generally ‘*does not bar claims that are predicated on events that postdate the filing of the initial complaint.*’ *Whole Woman’s Health v. Hellerstedt*, 579 U. S. ___, ___ (2016) (slip op., at

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12) (internal quotation marks omitted); *Lawlor v. National Screen Service Corp.*, 349 U. S. 322, 327–328 (1955) (holding that two suits were not ‘based on the same cause of action,’ because ‘[t]he conduct presently complained of was all **subsequent** to’ the prior judgment and it ‘cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case’). This is for good reason: Events that occur after the plaintiff files suit often give rise to new ‘[m]aterial operative facts’ that ‘in themselves, or taken in conjunction with the antecedent facts,’ create a new claim to relief. Restatement (Second) §24, Comment f, at 203; 18 J. Moore, D. Coquillette, G. Joseph, G. Vairo, & C. Varner, *Federal Practice* §131.22[1], p. 131–55, n. 1 (3d ed. 2019) (citing cases where ‘[n]ew facts create[d a] new claim’).”(Emphasis added.)

Here, the Order of Dissolution was made effective June 29, 2016. Because Petitioners provided better proof that there was a dissolution, Petitioners have new Causes of Action. Accordingly, the Motion to Dismiss should have been denied on this basis, since the Complaint as a whole was not barred by claim preclusion.

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CONCLUSION.

Petitioners request that the Judgment be reversed, and the District Court remand the case back to the Superior Court of the State of California, in and for the County of Monterey.

Dated this 2nd day of November, 2020

Bv: Petra Martinez
PETRA MARTINEZ
P. O. Box 4019
Monterey, CA., 93942
In Propria Persona

Dated this 2nd day of November, 2020

Bv: Stan Atkinson
STAN ATKINSON
P. O. Box 4019
Monterey, CA., 93942
In Propria Persona