

ORIGINAL

20-6236

No.

Supreme Court, U.S.
FILED

NOV 03 2020

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**In the
Supreme Court of the United States**

Elet Valentine, Pro Se,

Petitioner

v.

PNC Financial Services Group, Inc. et al

Respondent(s)

**ON PETITION FOR A WRIT OF
CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH
CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

Elet Valentine, Pro Se, Petitioner
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Bldg. 18 Apt 102
Denver, CO 80239
720-750-2234

Question(s) Presented For Review

1. DID THE DISTRICT COURT ERR IN CONTINUING TRIAL COURT PROCEEDINGS WHEN IT WAS DIVESTED OF JURISDICTION ON JANUARY 8, 2019, AND CONFERRED TO THE TENTH CIRCUIT BY INTERLOCUTORY APPEAL IN CASE NO. 19-1007?
2. DID THE DISTRICT COURT ERR BY RE-RULING ON (ECF #67] PURSUANT TO THE LAW OF CASE DOCTRINE?
3. DID DISTRICT COURT ERR IN CONTINUING COURT PROCEEDING WHEN IT DISMISSED ALL CLAIMS OF THE COMPLAINT?
4. DID DISTRICT COURT ERR IN DISMISSING COMPLAINT WITH PREJUDICE?
5. DID THE DISTRICT COURT ERR IN DENYING APPELLANT LEAVE TO AMEND COMPLAINT [ECF #36) WITH "OPPOSED-2ND AMENDED COMPLAINT TO ADD DEFENDANTS"[ECF#67] PURSUANT TO FED. R. CIV. P. 15 (C) (1)? (THIS ISSUE IS INCORPORATED INTO THIS OPENING BRIEF BY REFERENCE FROM CASE NO. 19-1007 APRIL 9, 2019, REF NO. 10639943 "OPENING BRIEF SUPPLEMENT" DOC NO. 010110243637)
6. DID THE DISTRICT COURT ERR BY NOT DECLARING THE APPELLEE'S ANSWER TO THE SUMMONS AND COMPLAINT (I.E. "MOTION TO DISMISS" [ECF #401) UNTIMELY, BECAUSE IT WAS NOT SUBMITTED WITHIN THE REQUIRED 21 DAYS AFTER PERSONAL SERVICE WAS MADE UPON THEIR ATTORNEY OF RECORD PURSUANT TO FED. R. CIV. P. 12(A)(1)(A)(I)?
7. DID THE DISTRICT COURT ERR BY NOT DECLARING THE APPELLEE'S ANSWER TO THE SUMMONS AND COMPLAINT (I.E. "MOTION TO DISMISS" [ECF #401) UNTIMELY, BECAUSE IT, WAS NOT

SUBMITTED WITHIN THE REQUIRED 21 DAYS AFTER PERSONAL SERVICE WAS MADE UPON THEIR ATTORNEY OF RECORD PURSUANT TO FED. R. CIV. P. 12(A)(1)(A)(I)?

8. DID THE DISTRICT COURT ERR CAUSING PREJUDICE THE APPELLANT BY CAUSING AN UNDUE DELAY IN THE COURT PROCEEDINGS WITH [ECF #92) AND [ECF #94)?

9. DID THE DISTRICT COURT ERR BY NOT HAVING THE PROCEDURAL REQUIREMENT OF SERVICE OF THE SUMMONS AND COMPLAINT PURSUANT TO FED. R. CIV. P. 4 BE SATISFIED ON ALL DEFENDANTS BEFORE THE DISTRICT COURT EXERCISES JURISDICTION OVER A DEFENDANT, APPLY ANY MOTIONS, COMPOSE AND ADOPT RECOMMENDATIONS PERTAINING TO, ISSUE RULINGS, ORDER DENIALS ALL PERTAINING AND CONCERNING THE PENDING [ECF #67)?

10. DID THE DISTRICT COURT ERR BY NOT HAVING THE PROCEDURAL REQUIREMENT OF SERVICE OF THE SUMMONS AND COMPLAINT PURSUANT TO FED. R. CIV. P. 5 BE SATISFIED ON ALL DEFENDANTS BEFORE THE DISTRICT COURT EXERCISES JURISDICTION OVER A DEFENDANT, APPLY ANY MOTIONS, COMPOSE, ADOPT RECOMMENDATIONS PERTAINING TO, ISSUE

Corporate Disclosure Statement

Ms. Elet Valentine, Pro Se Petitioner (“Valentine”) is an individual consumer who received services from PNC Financial Services Group, Inc., PNC Bank, National Association (PNC Bank, N.A.), and PNC Mortgage (collectively known as (“PNC”). Valentine is not a corporation.

List of Parties to Proceeding

[] 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 all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

List of Petitioners:

1. Elet Valentine, Pro Se
3273 S. Truckee Way
Bldg. 18 Apt 102
Aurora, CO 80013
United States

List of Respondent(s)

2. PNC Financial Services Group, Inc.
c/o Ballard Spahr, LLP
Attn: Matthew A. Morr, Attorney
1225 17th Street, Ste 2300
Denver, CO 80202
United States
3. PNC Bank, National Association (PNC Bank, N.A.)
c/o Ballard Spahr, LLP
Attn: Matthew A. Morr, Attorney
1225 17th Street, Ste 2300
Denver, CO 80202
United States

4. PNC Mortgage
c/o Ballard Spahr, LLP
Attn: Matthew A. Morr, Attorney
1225 17th Street, Ste 2300
Denver, CO 80202
United States

List of Interested Parties:

5. Todd Eugene Scheuerman, an individual
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Firestone, CO 80504
United States
6. The Netzer Group
c/o Hatch Ray Olsen Conant, LLC
Attn: Brian Ray, Attorney
730 17th Street, #200
Denver, CO 80202
United States
7. The Corporation Company, Registered Agent
c/o Caliber Home Loans, Inc.
7700 E. Arapahoe Rd., Ste 220
Centennial, CO 80112 United States
8. The Corporation Company, Registered Agent
c/o Summit Trustee Services, LLC
7700 E. Arapahoe Rd., Ste 220
Centennial, CO 80112
United States

Related Cases

Valentine v. PNC Financial et al, No. 19-1466, U.S. Court of Appeals for the Tenth Circuit. Order and Judgment entered July 14, 2020

Valentine v. PNC Financial et al, No. 19-1007, U.S. Court of Appeals for the Tenth Circuit. Order and Judgment entered July 14, 2020

The Netzer Group, LLC. v E. Valentine, No. 19CA290, Colorado Court of Appeals. (Pending Division Assignment June 11, 2020)

Valentine v. PNC Financial et al, No. 19-1350 U.S. Court of Appeals for the Tenth Circuit. Order entered December 2019

Valentine v. PNC Financial Services Group, Inc., et al, No. 18-cv-01934, U.S. District Court for the District of Colorado. Judgment November 13, 2019

The Netzer Group, LLC. v. Valentine, Elet. No. 18-cv-034632, Denver District Court. Order of Possession February 15, 2019

Netzer Group, LLC, The v. Valentine. No. 19-cv-00025, U.S. District Court for the District of Colorado. Order for Remand January 2019

Netzer Group v. Valentine, No. 19-1040, U.S. Court of Appeals for the Tenth Circuit. Order Dismissed Jurisdictional Defect February 25, 2019

Valentine, E. v. PNC Bank, N.A., No. 18CA1189, Colorado Court of Appeals. Order of Dismissal July 3, 2018

PNC Bank, N.A. v. Valentine, Elet, No. 18-cv-31488, Denver District Court. Order Authorizing Sale June 14, 2018

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States Court of Appeals appear at Appendix A to the petition and is

☐ reported at _____; or

☐ has been designated for publication but is not yet reported; or

☒ is unpublished

The opinion of the United States District Court appears at Appendix R to the petition and is

☐ reported at _____; or

☐ has been designated for publication but is not yet reported; or

☒ is unpublished

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix to the petition and is

☐ reported at _____; or

☐ has been designated for publication but is not yet reported; or

☐ is unpublished

The opinion of the _____ court appears at Appendix to the petition and is

☐ reported at _____; or

☐ has been designated for publication but is not yet reported; or

☐ is unpublished

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was
July 14, 2020

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: **August 4, 2020**, and a copy of the order denying rehearing appears in Appendix ____A____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A____.

The jurisdiction of this Court is invoked under 25 U.S.C. §1254(1).

☐ For cases from state courts:

The date on which the highest court decided my case was _____(date)

☐ A timely petition for rehearing was thereafter denied on the following date: _____(date), and a copy of the order denying rehearing appears in Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A____.

The jurisdiction of this Court is invoked under 25 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent text of the Title I of The Consumer Credit Protection Act, 15 U.S.C. §1601 et seq. of the Truth and Lending Act, Title 24 of HUD's section of the Code of Federal Regulations (CFR) Chapter IX, 28 U.S.C. §1291, 28 U.S.C. §1292, Regulation Z, and 12 U.S.C. §2605 et seq., and the Real Estate Settlement Procedures Act are set out in the appendix to the petition.

STATEMENT OF THE CASE

SUMMARY

This Writ of Certiorari is brought on an original lawsuit filed July 30, 2018, as Valentine filed a private right of action claims (“The Claims”) in the U.S. District Court of for the District of Colorado under Case No. 18-cv-01934. The Claims sought are various damages and the “title and ownership” of her home located at 12692 Hickman Place; Denver, CO 80239, with a legal address as Lot 1 Block 9, Montbello, Filing No. 13; City and County of Denver, CO 80239; State of Colorado (“The Property”).

The compliant continuously claimed PNC et al skimmed mortgage payments from mortgage account to their corporate account causing mortgage payments to become unapplied on the mortgage account without correction. It was discovered in the 2017 Rule 120 Hearing that the skimming of Mortgage payments began as early as June 2008. The skimming of mortgage payments leads to the default of the Fair Housing Act (“FHA”) loan, leads to foreclosure on the Secretary of Housing and Urban Development (“HUD”) home on three separate occasions (i.e. 2009, 2012, and 2018), ultimately the loss of the HUD home in 2018, and the wrongful eviction of Valentine from the HUD Property in 2019.

It was also discovered that PNC Bank only foreclosed on a voided 2003 Deed of Trust and Promissory Note. The 2003 Deed of Trust and Promissory Note was voided and replaced when the Property was refinanced under HAMP in 2013. The First 2013 Deed of Trust was held by PNC and the Second 2013 Deed of Trust is

still held by HUD. In the 2018 Public Trustee Sale, the proceeds paid the Note in full for the 2013 Deed of Trust held by PNC. The 2013 Deed of Trust held by HUD was not paid in full. The second HUD 2013 Subrogated Deed of Trust is still recorded with the Denver Clerk and Recorder and was never foreclosed upon. The 2013 First PNC Deed of Trust and Promissory note were never recorded with the City and County of Denver's Clerk and Recorder's Office ("The Denver Clerk and Recorder"). As of today both 2013 Deeds are valid on The Property.

The claims in the verified complaint against PNC filed in the U.S. District Court were based for violations while PNC et al serviced the HUD FHA loan. These violations occurred before the 2017 foreclosure and before filing suit in the Federal Court.

The violations under the Deed of Trust and Promissory Note were pursuant to 12 U.S.C. §2605 – Servicing of Mortgage Loans and Administration of Escrow Accounts ("12 U.S.C. §2605"). 12 U.S.C. §2605 rises under the Real Estate Settlement Procedure Act ("RESPA"), The Truth and Lending Act ("TILA"), The Consumer Financial Protection Bureau (CFPB), Regulation Z, The Consumer Credit Protection Act, and Title 24 of HUD's section of the Code of Federal Regulations (CFR) Chapter IX all are under Federal Law. – (case 18-cv-31488) (18ca1189) (19-cv-1040) (18-cv-01934) (19-cv-1290) (*18-cv-034632*) (*18-cv-0025*)

Valentine has been subjected to a miscarriage of justice as a result of unfair hearings, undue delays, and/or the court not following the Federal Rules of Civil

Procedure. This can be seen by the court omitting, ignoring material facts and issues presented in the complaint, briefs, and Notice of Appeals. The District Court scheduled their first pre-trial conference regarding un-briefed complaint over 12 months of the filing of the case and only after they were divested of jurisdiction. The U.S. District Court never gave leave for the submission of the Second Amended Complaint filed on December 12, 2018. These issues, such as ignoring the untimely motion to dismiss, material facts argued for in Briefs for Temporary Injunction, Notice of Appeals, two valid Deeds of Trusts on The Property, issues regarding title and ownership, divestiture of jurisdiction from The U.S. District Court to the U.S. Court of Appeals, and were never evaluated on their merits. The issues have never acknowledged by the courts or judged by their merits. If these material facts were acknowledged, the outcome of the case would have been different.

Valentine has been subjected to a miscarriage of justice as a result of unfair hearings, undue delays, and/or the court not following the Federal Rules of Civil Procedure. This can be seen by the court omitting, ignoring material facts and issues presented in the complaint, briefs, and Notice of Appeals. The District Court scheduled their first pre-trial conference regarding un-briefed complaint over 12 months of the filing of the case and only after they were divested of jurisdiction.

The U.S. District Court never gave leave for the submission of the Second Amended Complaint filed on December 12, 2018. These issues, such as ignoring the untimely motion to dismiss, material facts argued for in Briefs for Temporary Injunction, Notice of Appeals, two valid Deeds of Trusts on The Property, issues regarding title and ownership, divesture of jurisdiction from The U.S. District Court to the U.S. Court of Appeals, and were never evaluated on their merits. The issues have never acknowledged by the courts or judged by their merits. If these material facts were acknowledged, the outcome of the case would have been different.

The consistent pleas to the lower courts to correct this miscarriage of justice prior to this Writ of Certiorari are summarized by case below:

Re: PNC Bank, N.A. v. Valentine, Elet, No. 18-cv-31488, Denver District Court. Order Authorizing Sale June 14, 2018

On April 25, 2018, PNC Bank initiated Foreclosure by filing a District Court Cover Sheet, Motion to Authorize Sale, and Notice of Rule 120 Motion for Order Authorizing Sale ("PNC Rule 120 Documents") all were filed with the Denver District Court. The PNC Rule 120 Documents claimed they were entitled to foreclose because the *"9/30/2003 Promissory Note and Deed of Trust...executed by Elet Valentine...have been violated...defaults have been made under said Deed of Trust which include...failure to make timely payments required under said Deed of Trust and Note..."*

On May 10, 2018, Valentine filed an answers objecting to the PNC Rule 120 Documents. Valentine filed an answer and an two amended answers (“Valentine Answer to PNC Rule 120 Documents”) making claims and detailing how Deed of Trusts were unrecorded, invalid 2003 Deed of Trust, overpayments and unapplied payments not reflected on the mortgage account, mismanagement of her escrow account, and PNC was outside of the statute of limitations to foreclose on the property.

Valentine’s answer to PNC Rule 120 Documents was based on Colorado State Statues and State Case Law. Federal Case Law was argued to show the trigger date for the statute of limitation, was found in (Davis v. Wells Fargo Bank, No. 17-cv-00714, US District Court of the District of Colorado). Valentine’s claims regarding the overpayment and unapplied credits were supported by 12 C.F.R. Part 1024.17(f)(2)(i), C.F.R. Part 1024.17(f)(2)(i)(ii)(iii), C.F.R. Part 1026.41(d)(3)(1), C.F.R. Part 1026.41(d)(4)(1), C.F.R. Part 1026.41(d)(4)(3), Regulation Z, HUD FAQ’s.

During the hearing, the Honorable Judge Buchanan ordered PNC to “*The Court understands that the Plaintiff will, uh, need to account for, for the purpose determining, uh, distribution of the sale’s proceeds, us and will require that it carefully review the accounting of its suspense accounts and make sure that every penny that was received from Ms. Valentine is properly accounted for, uh, and -- and credited to the account so that disbursement of whatever sales proceeds may be*

granted are properly allocated. Uh, that will be the order." **Certified Transcript page 6 lines 14-25 and page 7 line 1.** Valentine's position is if the court ordered PNC to is to make an accounting to the mortgage accounts and to issue a refund issue there was never a default. PNC never conducted the ordered accounting on the account, before they sent the property to Foreclosure Sale. (Appendix brief Case No. 18-01934)

On June 13, 2018, the case was closed and an order issued Authorizing Sale on June 14, 2018.

Re: Valentine, E. v. PNC Bank, N.A., No. 18CA1189, Colorado Court of Appeals. Order of Dismissal July 3, 2018

On June 27, 2018, Valentine filed a Notice of Appeal with the Colorado Court of Appeals in response to the June 14, 2018, Court Order in the Rule 120 Case No. 2018CV31488. She again restating the positions she took in the Rule 120 Hearing. Valentine's position was again supported on Colorado State Statue, State Case Law, Federal Statue, Federal Regulation, and Federal Case Law. (Appendix #)

On July 3, 2018, The Colorado Court of Appeals Dismissed the Appeal with Prejudice for the lack of jurisdiction.

Re: Valentine v. PNC Financial Services Group, Inc., et al, No. 18-cv-01934, U.S. District Court for the District of Colorado. Judgment November 13, 2019

On July, 30, 2018, Valentine filed a timely Verified Complaint for Damages and Jury Demand against PNC et al in the U.S. District Court under Case No. 18-cv-01394. (Appendix#) The Claims brought in this case occurred before the foreclosure

action in The Denver District Court in Case No. 18CV. Valentine did not complain about the Rule 120 Hearing in any of her claims in this case. The claims under this case we for the following violations: (see brief 25)

On July 31, 2018, Valentine also timely filed Lis Pendens with the City and County of Denver Clerk and Recorder's Office approximately five (5) months before the property was sent to the Public Foreclosure Auction held by the Denver Public Trustee's Office to preserve her rights against the property.

On August 2, 2018, Valentine filed a Motion for an Ex Parte Temporary Restraining Order/Preliminary Injunction with the U.S. District Court Case No. 18-cv-01934 to preserve the evidence in the case. On August 16, 2019, Valentine also filed a Brief and an Amended Brief in support of the Preliminary Injunction.

Valentine cited the following case law, federal statutes, and regulations in support of her position: Mayotte v U.S." Bank, N.A. January 23, 2018, The Rooker Feldman Doctrine, FTC v. Mainstream Marketing Services, Inc. (10th Cir 2003), 12 U.S.C. §2605 Servings of Mortgage Loans and Administration of escrow accounts, 42 U.S.C. 1983, (HUD) Handbook Policy 4000.1 Foreclosure Sections (III) (A) (2) (r), Late Charges Section Default/Foreclosure Due to Unpaid Late Charges; (III) (A) (2) (d) (ii) (C), Partial Payments - Partial Payments for Mortgages in Default; (III) (A) (2) (e) (i) and (III) (A) (2) (e) (ii) Partial Payments for Mortgages in Default; §1026.36(c)(1)(i)- Servicing Practices-Payment Processing; 12 CFR § 1024.17(c) (1)(ii) Charges during the life of the escrow account; 12 CFR § 1024.17(c)(5) Cushion; 12

CFR §1024.17(c)(3) Subsequent Escrow Account Analyses; 12 CFR §1024.17(c)(8) Provisions in Federally Related Mortgage Documents; 12 CFR § 1024.17(f)(1), 12 CFR § 1024.17(f)(1)(ii), 12 CFR § 1024.17(f)(2)(i), 12 CFR § 1024.17(f)(2)(iii) Shortages, Surpluses and Deficiencies Requirements - Escrow Analysis, 12 CFR § 1024.17(f)(3) Shortages; 12 CFR § 1024.17(f)(4) Deficiencies; 12 CFR § 1024.17(f)(5) and 12 CFR § 1024.17(i) Notice of Shortage or Deficiency in Escrow Account; 12 CFR §1024.17(i)(1) Annual Escrow Statement- contents of Annual Escrow Account Statement; 12 CFR §1026.41(d)(3)(1), 12 CFR §1026.41(d)(4)(1)(ii), and 12 CFR §1026.41(d)(4)(3) Past Payment Breakdown; 12 CFR §1026.41(a)(2) Periodic Statements Rule; C.R.S. §13-80-103.5(1)(a); C.R.S. §38-38-101, C.R.S. §38-35-109(5); 15 U.S.C. §45 Unfair and Deceptive Acts.

The Court only required the TRO/Preliminary Injunction to be brief. The Complaint for the case was never briefed.

Re: The Netzer Group, LLC. v. Valentine, Elet. No. 18-cv-034632, Denver District Court. Order of Possession February 15, 2019

On December 17, 2018, Netzer initiated a FED Action by filing a Summons in Unlawful Detainer in *The Denver District Court Case No. 18-cv-034632*. Netzer claimed they were the legal owner of the property by virtue of possession of the Confirmation Deed they obtained from the Denver County Public Trustee Sale. Netzer requested possession and a Writ of Restitution as provided for by Colorado Law. (

The Netzer FED Action originated due to PNC sending the case to the Public Trustee Foreclosure Sal-cv-e without the permission or notification from the U.S. District Court in Case No. 18-cv-01934.

On December 26, 2018, Valentine filed an answer and paid the fee for a Jury Demand in response to the Netzer Fed Action. In the answer to the Netzer FED action, Valentine again stated her position as owner of the property and reclaimed rights concerning ownership title, interests and any other entitlements incident to ownership. (Valentine again argued her claims as she did since the Foreclosure Rule 120 Hearing also advising of the Lis Pendens that is active and uncontested on the property.

On January 14, 2019, Valentine initiated a State Removal to the U.S. District Court from Denver District Court Forcible Detainer Action (FED) Case 18-cv-034632 pursuant to 28 U.S.C. §1964, 28 U.S.C. §1331, 28 U.S.C. §1367(a), 28 U.S.C. §1441(a), 28 U.S.C. §1446(d) and 28 U.S.C. §1443. (See Below)

On January 31, 2019, the U.S. District Court issued “Order Granting Plaintiff’s Motion To Remand” and the case is *Closed*. (See Below)

On February 13, 2019, at the beginning of the FED hearing, Valentine submitted three motions requesting a Jury Trial, a Stay to allow the Federal Court to determine “title and ownership,” because The Denver District Court did not have jurisdiction citing U.S. Const. art. IV, §1; Kerns, 53 P.3d 1157, 1165 (Colo. 2002).

“Title and ownership” had to be determined before possession could be granted in an

FED Action. Also, as stating, “Where then public interest lies the laws of the land and the fair treatment to them which gives itself to the Right to a Jury trial and Due Process in cases involving real property.” All motions were denied and the Denver District Court issued an Order for Possession.

On February 14, 2019, Valentine filed a Notice of Appeal to the Colorado Court of Appeals under Case No. 2019CA290. On February 19, 2019, The Denver District Court issued a Writ of Restitution to Netzer to evict Valentine from the Property. (See Case No. 19CA290 Below)

H. Re: Netzer Group, LLC, The v. Valentine. No. 19-cv-00025, U.S. District Court for the District of Colorado. Order for Remand January 2019

On January 14, 2019, Valentine initiated a State Removal to the U.S. District Court from Denver District Court Forcible Detainer Action (FED) Case 18-cv-034632 pursuant to 28 U.S.C. §1964, 28 U.S.C. §1331, 28 U.S.C. §1367(a), 28 U.S.C. §1441(a), 28 U.S.C. §1446(d) and 28 U.S.C. §1443.

The State Removal was initiated, because PNC wrongfully sent the property to the Public Trustee Foreclosure Sale, the case regarding “title and ownership” originated from a pending case in the U.S. District Court which forms part of the same controversy, and Denver District Court Judge indicated the U.S. District Court had jurisdiction to which she did not have jurisdiction over “title and ownership.”

Again, “title and ownership” was being contested for the same reasons as stated in both previous Denver District Cases No. 2018CV31488 and No. 18CV034632.

On January 8, 2019, Netzer filed a *“Motion to Remand and Requested For Expedited Briefing Schedule”* to send the case back to Denver District Court. Netzer argues that Valentine filed a frivolous Notice of Removal pursuant to 28 U.S.C. §1441 and has no basis for the State Removal to Federal Court. They further argue that they are the owners of the property following a valid state foreclosure sale and are entitled to an expedited eviction proceeding for possession of the Property. On January 31, 2019, the U.S. District Court issued “Order Granting Plaintiff’s Motion To Remand” and the case is *Closed*.

I. Re: Netzer Group v. Valentine, No. 19-1040, U.S. Court of Appeals for the Tenth Circuit. Order Dismissed Jurisdictional Defect February 25, 2019

On February 4, 2019, Valentine filed a Notice of Appeal from the 2019-cv00025 U.S. District Court Case.

On February 19, 2019, Valentine filed the requested “Memorandum Brief” and again stated her position and supported it with Colorado State Statue, State Case Law, Federal Statue, Federal Regulation, and Federal Case Law as was done in the previous cases to include the 14th Amendment, HUD, TILA, CFPB, Title 12 RESPA, 12 U.S.C. §2605 (f), 28 U.S.C. §1964, 28 U.S.C. §1331, 28 U.S.C. §1367(a), 28 U.S.C. §1441(a), 28 U.S.C. §1446(d) 28 U.S.C. §1443, and U.S.C. §1447(d).

Valentine also argues Netzer group filed an Amended Complaint in Federal Court which is still pending to add them as Defendants to the Federal Complaint in Case No. 18-cv-01934 pursuant to Fed. R. Civ. P. 15(c)(1). (Appendix #FF)

Valentine argued the State Removal was properly to be heard in the U.S. District Court as the requirements listed in *Gunn v Minton* 133 S. Ct 1059, 1065 (2013) had been met. She further supported her argument with the other following cases: *Lontz v Tharp*, 423 F.3d 435, 439 (4th Cir); *Wisconsin Dept. of Corrections v. Schacht*, 524 U.S. 381, 386 (1998); and *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 312 n.2 (2005);

Also, Valentine filed a request to consolidate the 19-cv00025 and 18-cv-01934, because the original jurisdiction regarding title and ownership was in the Federal Court and not State Court pursuant to previous ruling of the Denver District Court. On February 25, 2019, The U.S. Court of Appeals issued an order upholding the U.S. District's order and dismissing the Appeal. It was also stated the court is not persuaded by the arguments made by Valentine.

J. Re: Valentine v. PNC Financial et al, No. 19-1007, U.S. Court of Appeals for the Tenth Circuit. Order and Judgment entered July 14, 2020

On January 8, 2019, Valentine filed a timely Notice of Appeal ("Interlocutory Appeal") in the U.S. Court of Appeals for denial of Temporary Restraining Order/Preliminary Injunction ("The Injunction") from Case No. 18-cv-01934. The Court based the denial of The Injunction on the "lack of merit" for Claims contained in the complaint.

On February 4, 2019, Valentine filed a timely motion to supplement the record on appeal pursuant to Fed. R. App. P. 10.4. as key material documents was not contained in the record that supported Valentine's position on the issues on

appeal including the issue regarding “title and ownership.” On February 11, 2019, PNC objected to the request to supplement the record stating Valentine was not challenging “title” in this case. On February 22, 2020, Valentine filed an opposition to PNC response to a supplementation of the Record on Appeal. On February 11, 2020, The U.S. Court of Appeals issued an Order to include some of the items to supplement the record, but did denied the records to support her position regarding PNC untimely Motion to Dismiss and the issue regarding title.

On April 9, 2019, Valentine filed Opening Brief detailing the issues on appeal to include the untimely filing of the PNC response (i.e. Motion to Dismiss [Doc#40] in regard to the complaint. (Appendix #AA)

On May 10, 2018, PNC filed Response Brief detailing. On June 12, 2018, Valentine files a Reply Brief in response to PNC Response Brief disagreeing and reiterating her position. This case remained in a pending from January 2019 to July 2020 (19 months) waiting for the assignment of the panel of judges to hear the merits of the Interlocutory Appeal.

On September 10, 2019, Valentine filed a motion to file a Supplemental Opening Brief, in response to the August 1, 2019, Magistrate Recommendations [Doc#92] and the August 30, 2019, U.S. District Court ruling [Doc#94] in Case No. 18-cv-01934 regarding issues (i.e. untimely motion to dismiss and the second amended complaint). These issues were already contained in the January 8, 2019, and January 18, 2019, Interlocutory Appeals. The U.S. District Court was divested

of jurisdiction and jurisdiction was conferred to the U.S. Court of Appeals upon the filing of the Notice of Appeals in January 2019.

On September 10, 2019, Valentine also filed a motion requesting to extend the deadline to file a Supplemental Opening Brief for Doc# 92 and #94 in the U.S. Court of Appeals. Valentine's motion was granted on September 12, 2019, and the Supplemental Opening Brief was filed in the U.S. Court of Appeals on October 9, 2019. (Appendix #G)

Also, on September 10, 2019, Valentine filed a Second Amended Notice of Appeal for this case to include the issues (i.e. PNC Motion to dismiss and Leave to File Second Amended Complaint) surrounding Doc# 92 and #94 that were included in the Supplemental Opening Brief. The Second Amended Notice of Appeal was filed to have the documents Doc# 92 and #94 transferred to the U.S. Court of Appeals for the completion of the Supplemental Opening Brief and combined with Notice of Appeal and Amended Notice of Appeal filed January 2019 under Case No. 19-1007. Instead of the Second Amended Notice of Appeal being filed with Case No. 19-1007 and combined as requested, the Clerk of the U.S. Court of Appeals deemed it a new case and opens a second appeal case under Case No. 19-1350 on September 17, 2019. The Second Amended Notice of Appeal is attached to Case No. 19-1350 and not Case No. 19-1007. (See Case No. 19-1350) (Appendix #E) (Appendix #F) The decision to open a second appeal case under Case No. 119-1350 was an incorrect action taken by the Clerk of the U.S. Court of Appeals. The decision to

open a second case on apple triggered an immediate jurisdictional challenge and a wrongful frivolous certification issued by the U.S. District Court filed on October 10, 2019. Also, the frivolous certification also leads to an adversely ruling against Valentine in this case and the final Order in Case No 19-1466 and Case No. 19-1007. (See Case No. 19-1466 and Case No 19-1350) (Appendix #D)

On October 9, 2019, Valentine filed the Supplemental Opening Brief with the U.S. Court of Appeals under Case No. 19-1007. On October 22, 2019, Valentine also filed a motion to consolidate Case No 19-1007 and Case No. 19-1350. On December 13, 2019, the Motion to Consolidation was denied and The Court of Appeals issued an Order of dismissal for lack of jurisdiction. (See Case No. 19-1350) (Appendix #C) Valentine filed an Amended Notice of Appeal for Case No. 19-1350 to include Amended Notice of Appeal being filed with Case No. 19-1350 and combined as requested, the Clerk of the U.S. Court of Appeals deems it a new case and opens a third appeal case under Case No. 19-1466 on December 17, 2019. (See Case No. 19-1466) (Appendix #Y)

On February 14, 2020, Valentine also filed a motion to consolidate Case No 19-1007 and Case No. 19-1466. On February 18, 2020, Motion was denied advising Case No. 19-1007 has been fully brief. On February 18, 2020, Valentine filed a reconsideration Case No. 1007 had not been fully briefed as the Supplemental Opening Brief filed on October 9, 2019, was still pending. On July 14, 2020, the Motion to Consolidation was denied stating "*Exercising jurisdiction under 28 U.S.C.*

§1291m we affirm the order in No. 19-1466 and dismiss No. 19-1007 as moot and closed the case. (Appendix #B) The order from Judge Christine Arguello regarding a frivolous certification is not contained in Case No. 19-1466 as written in the order. The frivolous certification is contained in case 19-1350 that was opened by the U.S. Clerk of the U.S. Court of Appeals. Case No. 19-1350 was dismissed and closed for lack of jurisdiction. The merits of the case that were raised on appeal by Valentine were never addressed by the panel of judges in their July 14, 2020, order. (See Case No. 19-1466) (Appendix #X) (Appendix #Y)

Re: The Netzer Group, LLC. v E. Valentine, No. 19CA290, Colorado Court of Appeals. (Pending Division Assignment June 11, 2020)

On February 14, 2019, Valentine filed a timely Notice of Appeal with the Colorado Court of Appeals regarding . One of the issues on in the Notice of Appeal concerned if the Denver District Court violated the Due Process Rights of Valentine as it pertains to The Property. The Denver District Court attempted to delay the Appeal process by scheduling a hearing for damages when damages were already ordered in Case No. 19-cv-00025 and omitting material evidence from the record on appeal.

On March 29, 2019, The Colorado Court of Appeals issued an Order dismissing the Appeal without prejudice as it had not reached finality.

On May 7, 2019, The Denver District Court Vacated the May 16, 2019, court date with the withdrawal of the attorney's motion for attorney's fees and costs. The case was ordered closed.

On May 10, 2019, Valentine filed a reconsideration to reopen appeal and resubmitted an Amended Notice of Appeal as the Denver District Case No. 18CV34632 had reached finality and was closed. On May 16, 2019, The Colorado Court of Appeals accepts Valentine's motion of May 10, 2019, and reopens the Appeal under Case No. 19CA290. The Designation of Record and Request for Transcripts was completed on February 14, 2019.

On October 15, 2019, Valentine submits a "Request For The Court To Take Mandatory Judicial Notice" as the Transcripts contained in the Record on Appeal is missing 77 additional pages from the certified transcript the record on appeal is not complete pursuant to C.A.R. 10. The three motions that were submitted to the court in the February 13, 2019, FED Hearing were not contained in the court record and would only appear in the certified transcript which is missing the sections that contain the court order denying each motion.

On October 18, 2019, the Court of Appeals issues an Order vacating the Opening Brief due date and referring the case back to the Denver District Court for resolution to correct the supplemental record on appeal. Valentine is to *"notify the Court in writing of the status of the District Court proceeding...every 63 days."* On February 27, 2020, Valentine submits an Opening Brief in the Colorado Court of Appeals. On March 25, 2020, Netzer files a *"Motion to Dismiss the Appeal for Mootness."* The Netzer Motion was dismissed by the Court of Appeals on April 22, 2020.

On May 16, 2020, Netzer files an Answer Brief in the Colorado Court of Appeals. On June 8, 2020, Valentine files a Reply Brief to Netzer's Response Brief citing 28 U.S.C. §1331, *2 R. Patton C. Patton, Patton on Land Titles § 604 (1957, Ankenbrandt v. Richards, 504 U.S. 689, 705-06, 112 S.Ct. 2206, 2216, 119 L.Ed.2d 468 (1992), Campbell, 682 F.3d at 1283, Colorado River, 424 U.S. at 814, 96 S.Ct. at 1244-45, In re Burns & Wilcox, Ltd., 54 F.3d 475, 478 (8th Cir. 1995), and Mayotte v. U.S. Bank Nat'l Ass'n, 880 F.3d 1169, 1172 (10th Cir. 2018)*

As of June 11, 2020, this case is in a "*Divison Case Pending*" status.

Re: Valentine v. PNC Financial et al, No. 19-1350 U.S. Court of Appeals for the Tenth Circuit. Order entered December 2019

Also, on September 10, 2019, Valentine filed a Second Amended Notice of Appeal for this case to include the issues surrounding Doc# 92 and #94 that were included in the Supplemental Opening Brief. The Amended Notice of Appeal was filed to have the documents Doc# 92 and #94 transferred to the U.S. Court of Appeals for the completion of the Supplemental Opening Brief and combined with Notice of Appeal filed January 2019 under Case No. 19-1007. Instead of the Amended Notice of Appeal being filed with Case No. 19-1007 and combined as requested, the Clerk of the U.S. Court of Appeals deems it a new case and opens a second appeal case under Case No. 19-1350 on September 17, 2019. The Amended Notice of Appeal is attached to Case No. 19-1350 and not Case No. 19-1007. (See Case No. 19-1007) (Appendix #E) (Appendix #G)

The actions to open a second appeal case was an incorrect action taken by the Clerk of the U.S. Court of Appeals as it prompted a jurisdictional challenge and a wrongful frivolous certification by the U.S. District Court filed on October 10, 2019. Also, the frivolous certification also leads to an adversely ruling against Valentine in this case and the final Order in Case No 19-1466 and Case No. 19-1007. (See Case No. 19-1466 and Case No 19-1350) (Appendix #D)

On October 18, 2019, Valentine filed the requested Memorandum Brief with the U.S. Court of Appeals due to a jurisdictional challenge. Valentine argued there are overlapping issues already under Interlocutory appeal in Case No. 19-1007. The overlapping issues concerning the untimely filing of PNC Motion to Dismiss and the determination of the merits on the case as it pertains to the preliminary injunction was filed in the January Notice of Appeals. It addresses the non-overlapping issues of the dismissal of the 2nd Amended Complaint that attempted to add the interested parties to the case pursuant to Fed. R. Civ. P. 15(c)(1). Valentine, also argued, *"The goal is to avoid piecemeal appeals and the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may rise, from its initiation to entry of judgment."* Valentine cited Divesture Doctrine, Federal Court own jurisdiction, Undue delay, the two exceptions under 28 U.S.C 1291, the Amazon Exception, and the Collateral Doctrine in support of her position. (Appendix #Z)

The U.S. Court of Appeals issued an Order on December 13, 2019, dismissing the appeal for lack of jurisdiction. The issues that were raised on appeal by Valentine were never addressed by the panel of judges in the order. (Appendix #C)

Re: Valentine v. PNC Financial et al, No. 19-1466, U.S. Court of Appeals for the Tenth Circuit. Order and Judgment entered July 14, 2020

On December 6, 2019, Valentine filed a timely Amended Notice of Appeal to be consolidated with the Notice of Appeal filed on September 10, 2019. Instead of the Amended Notice of Appeal being filed with Case No. 19-1350, the Clerk of the U.S. Court of Appeals again deems it a new case and opens a third appeal case under Case No. 19-1466 on December 10, 2019. The Amended Notice of Appeal is attached to Case No. 19-1466 and not Case No. 19-1350 or Case No. 1007.

On January 16, 2020, Valentine filed an Amended Notice of Appeal stating

On February 14, 2020, Valentine also filed a timely Motion to Consolidate Case No 19-1007 and Case No. 19-1466 the only two cases on appeal in the U.S. Court of Appeals. On February 18, 2020, Motion to Consolidate was denied stating Case No. 19-1007 has been fully brief. On February 18, 2020, Valentine filed Reconsideration as Case No. 1007 had not been fully briefed as the Supplemental Opening Brief filed on October 9, 2019, was still pending. On July 14, 2020, the Motion to Consolidation was eventually denied with the ruling in Case No. 19-1466 and the case was closed. (See Case No. 19-1007) (Appendix# B)

On February 19, 2020, Valentine filed a timely Opening Brief in Case No. 19-1466 arguing the same issues that she has argued in the lower court and now in

this court. Valentine 28 U.S.C. §1291, Fed. R. Civ. P. 12, Fed. R. Civ. P. 15, Fed. R. Civ. P. 16, Fed. R. Civ. P. 4, Fed. R. Civ. P. 5, Barnes v. Sec. Life of Denver Ins. Co., Civil Action No. 18-cv-718-WJM-SKC at *4-5, Howard v Mail-Well Envelop Co., 150 F.3d 1227, (10th Cir. 1998), Miller v. Inst. for Def. Analyses, Civil Action No. 17-cv-02411-NYW, at *4 (D. Colo. May 2, 2019), Pelletier v. United States, 653 Fed. Appx. 6118, 5-6 (10th Cir. 2016), Riggins v. City of Louisville, No. CIV. A. 06-cv-02261-WYD, 2008 WL 4293652, at (D. Colo. Sept. 16, 2008), Concrete Works of Colorado., 321 F. 3d at 993 (quoting Hoffman v Saul Holdings Ltd P'ship, 262 F.3d 1128 (10th Cir. 2001), Pelletier v. United States, 653 Fed. Appx. 618, 5-6 (10th Cir. 2016) in support of her position.

On April 21, 2020, PNC submitted a Response Brief arguing the First Notice of appeal in Case No. 19-1007 did not divest the U.S. District Court of jurisdiction and the Second Case No. 19-1350 was frivolous and did not divest U.S. District Court of Jurisdiction, The U.S. District Court was justified in Dismissing the compliant in Case No 18-01934, and further stating PNC timely filed their Motion to Dismiss, and the U.S. District Court followed Federal procedure in ruling on the various motions (i.e, Motion To Dismiss, Plaintiff's Motion To Amend, Motion To File Second Amended Complaint DOC#67.)

On May 28, 2020, Valentine filed a timely Reply Brief arguing in opposition to PNC arguments and again challenged that the U.S. District Court was divested of jurisdiction as the Interlocutory Appeal impacts the wholly of the entire case.

Also arguing the Second Appeal that was opened by Clerk of Court was not frivolous as the U.S. District Court was divested of jurisdiction, the Motion to Dismiss was untimely, the Court dismissed all of the state claims without prejudice, and finality was reached under the Amazon Exception. Valentine cited the following in support of her position: Fed. R. Civ. P. 12, Fed. R. Civ. P. 15, Fed. R. Civ. P. 4, Fed. R. Civ. P. 5, Fed. R. Civ. P. 6, United States v. West, 646 F.3d, 745, 747-48 (10th Cir 2011), Barnes v. Sec. Life of Denver Ins. Co, Civil Action No. 18-cv*-718-WJM-SKC, at *5 (D. Colo. Jan 9, 2019), 28 U.S.C. §1291, and the Amazon Exception.

On July 14, 2020, U. S. Court of Appeals issued an Order affirming order in Case No. 19-1466 and dismisses Case No. 19-1007 as moot. The issues that were raised on appeal by Valentine were never addressed by the panel of judges in their July 14, 2020, order. (Appendix #B)

On July 29, 2020, Valentine submits a timely “Reconsideration for Gross material Error” for both cases on appeal (No. 19-1007 and No. 19-1466) arguing the U.S. Court of Appeals arguments for the dismissal of the both appeals were not issues under the Appeal. Also, the frivolous certification issued by the U.S. District Court has never been filed in Case No. 19-1466 and is only contained in the closed Case No. 19-1350 which is not under appeal. (Appendix #D) (Appendix #H)

On August 4, 2020, the U.S. Court of Appeals issued an order for both cases on appeal (No. 19-1007 and No. 19-1466) stating they construed Valentine’s Motion for Reconsideration as a motion for rehearing. The Motion was denied. (Appendix #A)

REASON FOR GRANTING THE PETITION

A petition for writ of certiorari should be granted on Case No. 19-1466 and Case No. 1007 is, because The United States Court of Appeals pursuant to U.S. Supreme Court Rule 10 (a) has “*entered a decision in conflict of the Court’s procedural rules... and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court’s supervisory power*” to protect all individuals from wrongful judgments by errors of the legal system, ensure the fair hearings, and unbiased application of checks and balances within the judicial system.

U.S. Court of Appeals failed to address the specific case(s) and issues raised in the accepted timely Notice of Appeal and the Amended Notice of Appeal. Instead, the U.S. Court of Appeals reviewed the case and issues contained in a closed case that was not under Appeal or contained in the Notice of Appeal and the Amended Notice of Appeal. The U.S. Court of Appeals made no determination(s) based on the merits from the issues and claims under the accepted and timely Notice of Appeal and Amended Notice of Appeal.

The U.S. Court of Appeals denied the request for rehearing to correct their judicial mistake(s) and the U.S. District Court’s judicial mistake(s) and/or bias in providing a fair hearing on the issues and evidence presented in the appeals. The failures of the U.S. Court of Appeal to correct the clearly-erroneous standard of review applied in this case has caused a miscarriage of justice in this civil case in

Fifth (5th), and Fourteenth (14th) Amendments of the United States Constitution.

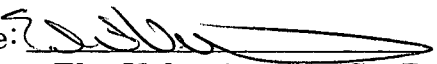
Therefore, the outcome of the civil appeal would have been different if the miscarriage of justice not happened, the U. S. Court of Appeals corrected the clearly-erroneous standard, reviewed the specific cases on appeal, review of the specific issues raised on appeal, and all evidence presented in this civil cases.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Dated this 3 day of November 2020

Signature: 
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