No. 21-1015

In The
Supreme Court of the United States

ANGELA CAO,

Petitioner,

v.

BSI FINANCIAL SERVICES, INCORPORATED; CHRISTIANA TRUST, WILMINGTON SAVINGS FUND SOCIETY, STANWICH MORTGAGE LOAN TRUST SERIES 2012-10, STANWICH MORTGAGE ACQUISITION COMPANY INCORPORATED, CARRINGTON MORTGAGE SERVICES L.C., SELENE FINANCE L.P.; MTGLQ INVESTORS L.P.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

ANGELA CAO
Petitioner, Pro Se
4003 Feagan, #1
Houston, TX 77007
Telephone: (281) 733-1243
E-mail: acao514@gmail.com

QUESTIONS PRESENTED

The Fifth Circuit vastly departed from the accepted and usual course of judicial proceedings and sanctioned the same by the lower court. Both the lower courts were asked and obligated yet refused to determine its jurisdiction and both acted beyond their authority. This raises an alarming question on whether there is institutional discrimination against pro se litigants or, on the other hand, whether there is considerable partiality towards a party that has egregiously committed fraud.

1. Whether the lower courts acted ultra vires and the judgments below are void.

2. Whether petitioner was deprived of her statutory right to appeal and whether her substantial rights to due process and equal protection were violated.

3. Whether the lower courts' orders constitute an expansion of judicial power beyond Article III, in violation of the separation of power doctrine.

4. Whether the lower courts' judgments are contrary to statute and precedents set by this Court and held in accordance by all other circuits.

5. Whether this case squarely presents the exigencies to provide litigants stronger due process protections when courts act sua sponte; a highly debated question touched but not yet resolved by this Court.

This case is a consolidation of two actions. When consolidation occurred, the first action had reached a stage

QUESTIONS PRESENTED – Continued

where core issues have been fully litigated and both parties sought resolution under the summary judgment standard. The procedure used to determine the matters provided an opportunity for review and gave notice of strict waiver, upon the failure to object to a magistrate's report. After none of the parties filed objections, the district court entered order fully adopting the report. Issue preclusion is applicable to this judgment; it passed a decision on issues that were litigated and necessary to the judgment.

The second action involves the same plaintiff and the defendants are in privity to the defendants in the first. Thus, issue preclusion for matters decided is applicable in equal force and the principle of finality and repose must be honored.

In this case, the judgment was expressly relied upon and none of the parties challenged its validity or finality. The district court was only required to consider the pleadings and apply the decided and undisputed facts to the law. However, in this extraordinary situation, the district court decided to take sua sponte action to raise controversy, to reopen and modify matters previously determined and entered sua sponte summary judgment, nullifying the prior judgment without providing any basis for its jurisdiction to do so. The final judgment was simultaneously entered without notice or an opportunity to respond. On reconsideration, the district court was asked to provide basis for its authority and it declined.

QUESTIONS PRESENTED – Continued

On appeal, the Fifth Circuit was asked and required to resolve whether the district court lacked authority to exercise judicial power in absence of controversy and over matters barred by issue preclusion and whether Cao's substantial rights were violated. The Fifth Circuit refused to consider and exacerbated the issues when it entered judgment without providing any basis for its jurisdiction. Its opinion reiterated defendants-appellees' brief after plaintiff pointedly showed that their responses were plain misrepresentations of the record. As a result, it ruled on irrelevant issues not properly before it and affirmed upon different grounds that were manifestly *unsupported* by the record. The Fifth Circuit was reurged to consider relevant issues and to provide basis for its jurisdiction; it refused.

PARTIES TO THE PROCEEDING

Petitioner:
Angela Cao ("Cao", "Petitioner" or "Plaintiff")
4003 Feagan, #1
Houston, TX 77007
Telephone: (281) 733-1243
E-mail: acao514@gmail.com

Respondents:
Selene Finance L.P. ("Selene") and MTGLQ Investors, L.P. ("MTGLQ") ("MTGLQ&S", "Respondents" or "Defendants")

Counsel:
Jeffery Shadwick
Hirsch &Westheimer, P.C.
1415 Louisiana Street, 36th Floor
Houston, TX 77002
Telephone: 713-220-9182
jshadwick@hirschwest.com

Respondents:
BSI Financial Services, Inc. ("BSI"), Christiana Trust, a Division of Wilmington Savings Fund, Society, FSB, as Trustee ("Christiana") and Carrington Mortgage Services, L.L.C. ("CMS")

("BC&C", "Respondents" or "Defendants")

Counsel:
R. Dwayne Danner
McGlinchey Stafford
1001 McKinney, Suite 1500
Houston, TX 77002
Telephone: 713-520-1900
Facsimile: 719-520-1025
ddanner@mcglinchey.com

RELATED PROCEEDINGS

United States District Court (S.D. Tex.):

Angela Cao v. BSI Financial Services et al., CV H-17-0321, 2019 WL 2234159 (May 6, 2019) (report and recommendation, adopted)

Angela Cao v. BSI Financial Services et al., CV H-17-321 2019 WL 2224905 (May 23, 2019) (order adopting)

Angela Cao v. BSI Financial Services et al., CV H-17-321 2020 WL 6800331 (June 30, 2020) (report & recommendations)

Angela Cao v. BSI Financial Services et al., CV H-17-321, 2020 WL 5568656 (September 17, 2020) (Memorandum Opinion and Order)

Angela Cao v. BSI Financial Services et al., CV H-17-321 2021 WL 76327 (January 8, 2021) (order denying reconsideration)

United States Court of Appeals (5th Cir.):

Angela Cao v. BSI Financial Services et al., 858 Fed. Appx. 156. WL 4126971 (September 9, 2021) (order)

Angela Cao v. BSI Financial Services et al., No. 21-20073 (October 13, 2021) (order denying rehearing)

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioner Angela Cao respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit and accordingly, the judgments in the United States District Court for the Southern District of Texas.

OPINIONS BELOW

The decision of the court of appeals (App.1-4, infra) is unreported at 858 Fed. Appx. 156 and can be found on WL 4126971. The decision of the United States District Court for the Southern District of Texas denying petitioner's post-judgment motion (App.5-13, infra) is unreported and can be found on WL 76327. The memorandum opinion and order for final judgment of the United States District Court for the Southern District of Texas (App.14-66, infra) is unreported and can be found at WL 5568656. The 2019 report and recommendation of the magistrate judge and order of the United States District Court for the Southern District of Texas adopting the report in full (App.68-97, infra) are unreported and can be found at WL 2234159 and WL 2224905.

JURISDICTION

The Fifth Circuit entered judgment on September 9, 2021. A petition for rehearing en banc was denied on

October 13, 2021 (App.98-99, infra). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are Article 3 § 1 et seq. and the Fifth and Fourteenth Amendments to the United States Constitution. The pertinent statute involved is 28 U.S.C.

STATEMENT

A. Statement of the Facts & Proceedings

The present lawsuit is a result of the consolidation of two lawsuits. The first lawsuit was filed by Petitioner ("Cao" below) in December 2016 against defendants BC&C, after Cao received notice of a substitute trustee's sale in November 2016. On September 17, 2018, BC&C filed their motion for summary judgment and on October 17, 2018, Cao filed her cross-motion for summary judgment. While the action was pending, defendant MTGLQ became the assignee of the deed of trust through a series of unnoticed assignments and the servicing was transferred to defendant Selene. On February 2019, Cao filed suit against defendants MTGLQ&S to stop an unnoticed trustee's sale and in March 2019, the lawsuits were consolidated. After consolidation, the complaint was amended with leave. On May 6, 2019, the magistrate filed a memorandum and

recommendation to the pending motions for summary judgment which was served to all parties under notice of strict waiver and on May 23, 2019, after none of the parties objected it was fully adopted by order of the district court (herein "2019 judgment"). App.68-97.

i. The following facts were determined on the 2019 judgment:

BSI rejected Cao's monthly payment in September 2010 demanding that she pay $8,930.30 to avoid acceleration of the loan. Cao disputed and BSI directed her to apply for modification. In November 2010, BSI denied the loan modification and demanded Cao to pay $13,777.72, plus attorney's fees and cost to avoid the scheduled foreclosure. On December 20, 2010, BSI demanded Cao to pay $17,479.19 to fully reinstate the loan. On December 29, 2010 Cao paid BSI $17,479.19 (herein "cure payment"), asserting it was made under duress. On January 7, 2011, BSI executed a notice of rescission.

On January 17, 2011, days after Cao's cure payment and the notice of rescission, BSI demanded that she pay $2,672.49 which included $366.35 in "Total Unpaid Late Fees". On February 16, 2011, BSI demanded Cao to pay $3,676.94, which included $1,370.80 in "Total Unpaid Late Fees". Defendants were only authorized to charge late fees in the amount of five percent of

the monthly principal and interest, being $78.38 at the time, and only once per late installment.[1]

On March 9, 2011, BSI abruptly terminated Cao's escrow. Cao continued to make principal and interest payments and BSI's demands for "Total Unpaid Late Fees" continued to increase, ranging from $1,959.46 to $2,050.69. On February 2, 2012, BSI rejected Cao's payments stating that her account was in foreclosure. On February 14, 2012, BSI demanded that Cao pay $7,467.02, in a Demand for Payment and Notice of Intent to Accelerate, stating, "Loan contractually due for December 1, 2011 and all subsequent installments".

On March 16, 2012, Cao filed a lawsuit against Protium Master Grantor Trust, Prommis Solutions and BSI in state court. On March 29, 2012, the parties to the state court lawsuit entered into a Mediated Rule 11 Agreement, which required Cao to make an initial lump sum payment consisting of four monthly payments of principal and interest ($1,567.55 *4 = $6,270.20). Thereafter, beginning May 2012, Cao was to make and defendants were to accept, monthly payments of $1,567.55, which consisted of principal and interest, and only applicable late fees thereof. The agreement suspended any alleged defaults that occurred prior to April 2, 2012, and required defendants not to accelerate the loan or post the property for foreclosure during the pendency of the suit, provided Cao make the monthly payments of principal and interest.

---

[1] At the time Cao's monthly payment of $2,306.14 included $1,567.55 for principal and interest and $738.59 for escrow.

On March 31, 2012, Cao made the lump sum payment and continued to make timely monthly payments thereafter.

In May 2012, BSI violated the Rule 11 Agreement and demanded Cao pay $7,471.44, which included $4,892.91 in "Unpaid Late Fees". On August 9, 2012, BSI sent Cao a notice of default and intent to accelerate, demanding that she pay $13,532.74, which included altered amounts of $1,266.91 in late fees and $4,530.24 in "Other Fees", within thirty day or the loan would be accelerated. In September 2012, the loan was sold to defendant Christiana and Cao was sent notice that foreclosure proceedings have been initiated and that she owed $257,630.28.

Cao continued to make timely monthly payments and in November 2012 the servicing was transferred to defendant CMS. By February 2013, demands increased to $28,900.44, which included fees restated as, $1,815.50 in late fees and $5,220.24 in "Default Cost(s)". CMS refused to adhere to the Rule 11 agreement and Cao's attempts to tender payments were rejected.

On or about October 26, 2015, the parties to the state court lawsuit attended mediation. At mediation, an agreement was signed between OakTree, as the lender, BSI and Cao. Cao asserted that the mediator assured her that impasse would be documented and that the Settlement Agreement was only an offer, not a settlement. On November 13, 2015, the state court relying on defendants' statement that the mediation

resulted in a settlement, enforced the agreement and dismissed the case. On December 21, 2015, the Dispute Resolution Center filed a document noting that the mediation resulted in "impasse".

In July 29, 2016, an assignment of the deed of trust from New York Mellon Trust to Christiana Trust was filed, evidencing that OakTree was not a party to the mortgage contract at the time of mediation or at any time. In November 2016 BSI and Christiana sent Notice of Substitute Trustee Sale showing Christiana as the mortgagee. In December 28, 2016, Cao filed the present suit.

In September 2018, MTGLQ&S sent notice of default for June 2012, stating that the total debt was $437,665.20. MTGLQ&S demanded Cao pay $253,127.92, which included altered amounts of $1,110.17 represented as late charges and $21,184.17 represented as "Corporate Advance Balance". On February 27, 2019, Cao filed lawsuit against MTGLQ&S. Cao has repeatedly disputed the amount she allegedly owes and attempted to resolve her issues with Selene who has proceeded to foreclose.

ii. Based on the aforementioned facts and evidence, the 2019 judgment found that:

(1) the December 29, 2010 cure payment "indisputably made Plaintiff current on her payments"; (2) BSI made multiple demands that included late fees that were excessively greater than allowed; (3) Cao was continuously demanded to pay increasing

amounts of fees and overdue amounts; (4) there is evidence that Cao was charged excessive interest (5) Cao's payments were rejected; (6) despite defendants' suggestion, evidence shows that Cao performed and there is no evidence that she breached; and (7) there is evidence that defendants breached. It further questioned OakTree's standing in the previous state case.

iii. Based upon these determinations, the 2019 judgment: denied movants' (defendants) motion for summary judgment for the breach of contract claim.

iv. Denial of Cao's motion was based on mootness.

After the 2019 judgment, Cao amended the complaint to explicitly incorporate the judgment and determinations therein.[2] BC&C's and MTGLQ&S's (collectively, "defendants" below) answers acknowledge and accepted the 2019 judgment.[3] On November 27, 2019, BC&C moved for judgment on the pleadings for all claims, and several days later moved alternatively for summary judgment *only* for the breach of contract claim.[4] On November 27, 2019, MTGLQ&S moved for judgment on the pleadings for all claims and in the

---

[2] *Angela Cao v. BSI Financial Services et al.*, CV H-17-321 (S.D. Tex. June 21, 2019) (Dkt. 115) (Third Amended Complaint).

[3] *Id.* at Dkt. 118 & 119.

[4] *Id.* at Dkt.133 & 136.

alternative, for summary judgment on certain claims.[5] Both set of defendants maintained the same defense as before, generally suggesting no evidence and that Cao's claims are barred by the statute of limitations. They submitted the same evidence, an affidavit, and did not submit or cite to any additional material evidence. On December 2, 2019, Cao filed motion for summary judgment, which again incorporated and relied on the 2019 judgment Cao addressed and negated defendants' limitations defense and identified and supported each claim.[6] On December 17, 2019, Cao filed her responses to Defendants' motions, incorporating her motion and further negated their limitations defense. She asserted that the material facts are determined and that defendants failed to show genuine dispute.[7] On December 19, 2019, MTGLQ&S filed their response.[8] On December 23, 2019, BC&C filed their response and additionally both set of defendants filed replies.[9] Defendants' responses and replies are similar; they merely rested on their pleadings by simply reiterating and incorporating their motions. The magistrate filed a report on June 30, 2020 ("2020 M&R"), restating the factual matters and citing to the 2019 judgment to remind defendants that "majority of the factual background" were previously determined.[10] She correctly

---

[5] *Id.* at Dkt. 135.

[6] *Id.* at Dkt. 139.

[7] *Id.* at Dkt. 143 & 144.

[8] *Id.* at Dkt. 145.

[9] *Id.* at Dkt. 148, 149 & 150.

[10] *Id.* at Dkt. 160 at 24, ftn. 123.

maintained defendants' suggestions of "no evidence" and hearsay meritless as to questions of fact that were previously determined.[11] Based on the pleadings, she found that: (1) defendants initially breached in January 2011; (2) Cao was continuously demanded for amounts that she did not actually owe; (3) there is no evidence that the overcharges were corrected; (4) it was is illogical to allow MTGLQ to obtain valid title to the property by making demands for payment beyond what the loan terms permitted; and (5) it was clearly unlawful for defendants to demand that Cao pay more than she owed, and then foreclose and keep all proceeds on the property when she refused or failed to pay that amount. The magistrate correctly stated that defendants asserted the statute of limitation and that Cao addressed it with tolling arguments, then proceeded to sua sponte raise issues and rebuttals to Cao's tolling provisions, then recommended dismissal for multiple claims she found to be time-barred. She recommended retaining Cao's breach of contract claim if Cao showed how the claim was not barred by limitations or if she identified to a breach that was not time-barred. She further recommended retaining: (1) Fair Debt Collection Practices Act ("FDCPA"); (2) Texas Debt Collection Practices Act ("TDCPA"); (3) quiet title; (4) Texas Theft Liability Act ("TTLA"); and (5) money had and received. On July 28, 2020, all parties filed their objections.[12] Defendants stated that their motions should be granted by generally suggesting no

---

[11] *Id.* at 25.

[12] *Id.* at Dkt. 165, 166 & 167.

evidence. Cao objected to the magistrate's rebuttal of her tolling provisions, recommended dismissals of her claims based on limitations, dismissals based on not meeting the essential elements, asserting that the established and uncontroverted material facts entitled her to summary judgment. As an additional precaution, she showed claims including breach of contract that were not time barred.[13] On August 10, 2020, all parties filed responses to the objections. Defendants generally alleged that Cao failed to establish material fact and that her objection to the magistrate's rebuttal was untimely. Cao asserted that the material facts were established and that Defendants, having no affirmative defenses, factually or legally, lacked ground to move for judgment.

B. The District Court's Decision

On September 17, 2020, the district court entered memorandum opinion and order and final judgment. App.14-67. The district court stated that it reviewed the "Factual Background" portion of the magistrate report which none of the parties objected to for clear error and in doing so it modified the January 2011-February 2011 portions. App.16. It relied on an exhibit that was undisputedly shown to support Cao's

---

[13] *Id.* at Dkt. 166, page 25, para. 43, cites to 2019 judgment when asserting that it is established that Cao did not default in June 2012. Page 23, para. 35, listing breaches after December 2012 that included but not limited to defendants' exercise of the power of sale, unauthorized charges of fees and interest after acceleration and foreclosure.

misrepresentation claims, the March 2012 "BSI letter", to retroactively change the representation of fees shown as "Total Unpaid Late Fees" on the January 2011-February 2011 demands. The district court then stated that it adopted the remaining factual and procedural background and then "considers[ed] the objection as to each cause of action in light of these modifications". App.22. Based on its "modifications", it concluded that: Cao defaulted in January 2011; her payment in June 2012 was insufficient to cover deficiencies and escrow; all amounts demanded by defendants were correct; defendants made no misrepresentations; and defendants' notices of foreclosure and MTGLQ's substitute trustee's deed and all proceeds kept by them were lawful. App.39-57. It refused to consider and deemed Cao's objections to the magistrate's rebuttal of her tolling provisions untimely and stated that Cao agreed to settle the prior state suit, enforcing the settlement agreement. It overruled recommendations and granted summary judgment for MTGLQ&S and BC&C for: breach of contract; duress, usury; TTLA; TDCPA; FDCPA; quiet title; and wrongful foreclosure claims. It granted judgment on the pleadings for BC&C and MTGLQ&S on: fraud; conspiracy; conversion; TX. Civ. P. & Rem. Section § 12.002; negligence and gross negligence per se; and fraudulent transfer. For money had and received, it granted MTGLQ&S's judgment on the pleadings and BC&C summary judgment. It dismissed all claims with prejudice.

Cao filed a motion to reconsider asking the district court to determine whether its findings were

implausible, whether it had authority to raise controversy and to sua sponte reopen, modify, move and set aside matters that were determined and barred by issue preclusion and whether it provided Cao notice and an opportunity to respond.[14] Defendants responded by stating that their motions and objections were legal in nature and supported the district court's clear error review and the modifications it made thereunder.[15]

The district court declined to give basis for its jurisdiction and denied reconsideration. App.5-13. Petitioner timely appealed.

C. The Fifth Circuit's Decision

The Fifth Circuit was asked to resolve whether the district court: (1) conducted an improper clear error review and its findings implausible; (2) lacked authority to raise controversy and exercise sua sponte powers over matters barred by issues preclusion; (3) failed to consider the 2019 judgment that was incorporated and attached to Cao's complaint and responsive pleadings to defendants' 12(c) motions for judgment on the pleadings; (4) improperly converted defendants' 12(c) motions into motions for summary judgment when it considered unpled controversies that it raised; (5) erroneously entered sua sponte summary judgment on upled matters without providing Cao notice or an opportunity to respond in violation of statute and Cao's substantial rights; and (6) improperly denied Cao

[14] *Id.* at Dkt. 175.

[15] *Id.* at Dkt. 176 & 177.

summary judgment when she was entitled to it as a matter of law.[16]

Defendants-appellees' response briefs stated that: (1) Cao defaulted and that they cured any alleged breach; (2) that the district court properly conducted a de novo review on the factual findings they objected to; (3) that there was not any matters outside of the pleadings, that Cao is merely taking issue with the district court's review of the BSI letter; (4) that they cross-moved and negated the tolling arguments; (5) that no conversion occurred; and (6) that they submitted summary judgment evidence.[17] Cao's reply specifically cited and quoted to the record to show that defendants' responses consisted wholly of misrepresentations, misquotes, and inconsistent and untimely disputes, collectively calculated to convolute the issues and mislead the court.[18]

The Fifth Circuit's decision affirmed the district court's judgment upon its ruling that: (1) Cao defaulted; (2) the district court properly conducted a de novo review on the objected to factual findings; (3) there was not any matters outside of the pleadings and that Cao is taking issue with the court reviewing her exhibit; (4) BC&C filed a motion for summary judgment on multiple claims; (5) Cao confuses the magistrate's

---

[16] *Angela Cao v. BSI Financial Services et al.*, No. 21-20073 (April 26, 2021) (Brief for Plaintiff-Appellant).

[17] *Id.* (June 15, 2021) (Appellees' Brief for MTGLQ&S) & (July 23, 2021) (Response Brief for Appellees BC&C).

[18] *Id.* (August 13, 2021) (Appellant's Reply to Appellees' Briefs).

report as her pleadings and the district court did not convert defendants' 12(c) motions to motions for summary judgment; (6) the district court did not exercise any sua sponte power; (7) defendants addressed Cao's tolling provisions; and (8) there was not any procedural defects. App.1-4.

Cao petitioned for rehearing en banc asserting that the panel failed to consider any of the relevant issues and that it affirmed upon different grounds that were manifestly *unsupported* by the record. That it compounded the issues when it failed to resolve jurisdictional and constitutional threshold matters and that the decision conflicted with statute and precedents. The Fifth Circuit refused to provide basis for its jurisdiction and denied rehearing.[19]

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit's Decision Promotes Fraud

It is alarming that the Fifth Circuit would enter a decision that is essentially a verbatim recitation of defendants' responses especially after Cao pointedly showed that their blatant falsehoods, determinative omissions, contextomy and specious arguments were plainly discernable from the face of the record. The Fifth Circuit's disregard for Cao, the record and

[19] *Id.* (September 23, 2021) (Plaintiff-Appellant's Petition for Rehearing & Rehearing En Banc). App.98-99.

indifference to defendants' misconduct raises questions of integrity; there is urgent need of this Court's supervisory power.

II. The Lower Courts Refused Its Affirmative Duty to Determine Its Jurisdiction

It is well established that Article III and statute requiring a court to determine its jurisdiction, even upon its own motion is "inflexible and without exception". That a judgment entered without any basis for its jurisdiction, opposed to an erroneous basis, is void. *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702, 102 S. Ct. 2099 (1982); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998); *Fafel v. Dipaola*, 399 F.3d 403, 410 (1st Cir. 2005).

In *Williams v. Zbaraz*, this Court ruled that the district court lacked and exceeded its jurisdiction in considering an issue interjected by the Court of Appeals, for it acted in absence of a case or controversy, a necessity to permit exercising judicial power under Art. III. This Court held that in injecting an issue not raised by the parties, the Court of Appeals could not create a case or controversy where none otherwise existed.[20]

There was not any challenge to the validity and finality of the 2019 judgment or to the factual background that was previously determined. None of the parties

[20] 448 U.S. 358, 100 S. Ct. 2694, 65 L. Ed. 2d 831 (1980).

raised issue with the January 2011-February 2011 demands nor did defendants claim that the BSI letter constituted anything other than misrepresentations; defendants did not even cite or mention the BSI letter. The district court's sua sponte actions to reopen and modify the 2019 judgment and to make claim that the letter constituted a correction was in absence of controversy. None of the parties raised nor did Defendants claim that the loan remained in default after the December 2010 cure payment, that such payment did not include all allegedly outstanding fees and that Cao defaulted in January 2011 by failing to pay for such fees. The district court's sua sponte action to enter judgment on such claims, nullify the 2019 judgment was in absence of controversy. None of the parties raised nor did Defendants claim that they did *not* cancel escrow in March 2011, that the Rule 11 agreement did *not* exist or that Oaktree had standing and Cao agreed to settle the prior state suit. The district court's sua sponte action to enter judgment on such claims, nullifying the 2019 judgment was in absence of controversy. The district court lacked jurisdiction to create and consider such controversies and its exercise of judicial power was forbidden under Article III.

The requirement to determine jurisdiction over a case or controversy "rests on the central principle of a free society that courts have finite bounds of authority . . . which exist to protect citizens from the very wrong asserted here, the excessive use of judicial power." *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77, 108 S. Ct. 2268, 2271, 101

L. Ed. 2d 69 (1988). The district court failed to provide any basis for its jurisdiction over the controversies it raised and entered final judgment on such controversies without providing Cao notice or an opportunity to respond. The judgments are void, they are jurisdictionally defective and in violation of due process. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). The district court's refusal to provide basis for its authority on reconsideration also renders that judgment void.

On appeal, the Fifth Circuit was obligated to take notice and resolve these issues, as no amount of discretion can supply validity to a judgment that is jurisdictionally defective and constitutionally invalid. *Id.*; *Armstrong v. Manzo*, 380 U.S. 545 (1965); *Ex parte Bradley*, 74 U.S. (7 Wall.) 364, 19 L. Ed. 214 (1868). The Fifth Circuit had "a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541, 106 S. Ct. 1326, 89 L. Ed. 2d 501 (1986) (internal quotations omitted); (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244, 55 S. Ct. 162, 79 L. Ed. 338 (1934)). However, it too ruled and entered judgment without providing any basis for its jurisdiction and after being implored, it too refused. The Fifth Circuit's judgment is void.

Both lower courts displayed a brazen usurpation of power and their judgments constitute an act of ultra vires; there is need of this Court's supervisory power.

III. The Lower Courts Refused Jurisdiction on Matters Properly Before It & Exercised Authority Over Matters Not Within Its Jurisdiction

The lower courts did not hear nor decided on matters that were properly within its jurisdiction, rather, it ruled on matters beyond its authority. This Court has long held that federal courts have "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 6 Wheat. 264, 404, 5 L. Ed. 257 (1821).

The Fifth Circuit decided to rely and reiterate defendants' statements as to what the issues were and what was in the record. Its inaccurate assessment of the record and complete lack of citation indicates that it did not examine the record, at all. Hence, the Fifth Circuit's decision to affirm the district court's judgment was based upon different grounds that were *not* supported by the record or within its jurisdiction. It is well established that the court of appeals may affirm a decision upon different grounds when it actually *finds* another reason *supported by the record* that led to the same conclusion. 10A Wright, Miller & Kane § 2716 (4th ed. 2021) (in review for summary judgment); *Dean v. University at Buffalo School of Medicine and Biomedical Sciences*, 804 F.3d 178 (2d Cir. 2015); *Gonzalez-Cancel v. Partido Nuevo Progresista*, 696 F.3d 115, 119 (1st Cir. 2012) (in review for judgment on the pleadings). An affirmation can only be used to affirm what is on the record and cannot be used to make say something other than what was originally pronounced. The

Fifth Circuit did not have jurisdiction to change the record.

Its ruling that the district court properly conducted a de novo review on the objected to factual findings was clearly not supported by the district court's judgments. The district court explicitly stated that it, "reviewed the Magistrate Judge's factual findings, to which the parties did not object, for clear error" (App.7) and "[t]he Magistrate Judge provided an exhaustive recitation of facts . . . and the parties did not specifically object to any . . . ". App.16. None of the parties disputed this and the issue is thusly waived. Defendants in fact, unequivocally concurred with the decision and are estopped from changing their position.[21] *Pegram v. Herdrich*, 530 U.S. 211, 227, n. 8, 120 S. Ct. 2143, 147 L. Ed. 2d 164 (2000); 18 Moore's Federal Practice § 134.30, p. 134-62 (3d ed. 2000). The Fifth Circuit lacked jurisdiction to affirm on this ground, it was clearly unsupported by the record. A de novo review is nonetheless barred by res judicata and even if

[21] *Angela Cao v. BSI Financial Services et al.*, CV H-17-321 (S.D. Tex. Nov. 4, 2020) (BC&C's Response to Plaintiff's Motion for Reconsideration and Relief from Judgment) (Dkt. 177 at 10-11). BC&C stated, "the Order includes a footnote confirming that the Court detected this erroneous factual finding while reviewing the uncontested portions of the Magistrate Judge's M&R for clear error" and "the Court actually complied with Rule 72 and longstanding Fifth Circuit precedent when it reviewed the portions of the M&R which were not objected to for clear error and when it subsequently modified those clearly erroneous factual findings."

it was not, a clear error review is mandated by 28 U.S.C. and Fed. R. Civ. P. 52(a).[22]

The remainder of its decision was just the same, it ruled on completely irrelevant issues without any support of the record. Matters outside of the pleadings consisted of the controversies that were not pled by the parties and raised by the district court; it was immaterial that it looked at the BSI letter Cao submitted. Conversion of BC&C's 12(c) motion for judgment on the pleadings into a motion for summary judgment is plainly shown on the record.[23] However, the main issue was that the district court considered and based its conclusions on controversies that were not in the pleadings nor presented by the parties. Thusly, it converted all defendants' 12(c) motions into motions for summary judgment.[24] The record clearly shows that

---

[22] Fed. R. Civ. P. 52(a)(6) states, "Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous . . . " *Pullman-Standard v. Swint*, 456 U.S. 273 (1982); *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564 (1985).

[23] Compare App. 65-66 (granting BC&C summary judgment for breach of contract, duress, usury, TTLA, TDCA, FDCPA, quiet title, wrongful foreclosure and money had & received) to *Angela Cao v. BSI Financial Services et al.*, CV H-17-321 (S.D. Tex. November 29, 2019) (Dkt. 136) (Defendants' Motion for Summary Judgment) (moving only for breach of contract).

[24] Fed. R. Civ. P. 12(d) states, "Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 56; 28 U.S.C. *Carter v.*

defendants did not even acknowledge Cao's tolling provisions nonetheless negated them, thus, the magistrate's rebuttal also constituted matters outside of the pleadings.[25] Ergo, the issue is that the district court was prohibited from entering sua sponte summary judgment on controversies not before it, on matters barred by issue preclusion, and exponentially forbidden to do so without providing Cao fundamental due process. These errors were not harmless. Cao was denied summary judgment when law mandated it. The essential facts were determined and uncontroverted; it only needed to apply the law to the facts, not create controversy.

The Fifth Circuit's failure to acknowledge the matter of issue preclusion was a slight to the principle of reliance and repose which it should have honored and critically so considering the decisions affected title to Cao's land.

Issue preclusion is one of the two doctrines that encompass res judicata, precluding the parties and their privities from relitigation of an issue that was previously litigated, decided and was necessary to the judgment. *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589, 1594, 206 L. Ed. 2d 893 (2020); 18 Charles A. Wright & Edward H. Cooper, *Federal Practice & Procedure* § 4416 (3d ed.

Stanton, 405 U.S. 669, 92 S. Ct. 1232, 31 L. Ed. 2d 569 (1972); *Hernandez v. Coffey*, 582 F.3d 303 (2d Cir. 2009).

[25] *Angela Cao v. BSI Financial Services et al.*, CV H-17-321 (S.D. Tex. December 19 & 23, 2019) (Dkt. 145, 148, 149 & 150).

2021) ("Wright & Miller"). The doctrine of res judicata is grounded in the policy of judicial finality, to which reliance and repose is fundamental to "public policy and private peace". *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 101 S. Ct. 2424, 69 L. Ed. 2d 103 (1981); *Plaut v. Spendthrift Farm, Inc.* 514 U.S. 227 (1995). This Court has long held that the effects of res judicata is enhanced,

> "Where questions arise which affect titles to land, it is of great importance to the public that, when they are once decided, they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change . . . Doubtful questions on subjects of this nature when once decided, should be considered no longer doubtful or subject to change."

United States v. Title Ins. Co., 265 U.S. 472, 486, (1924) (quoting *Minnesota Min. Co. v. National Min. Co.*, 3 Wall 332, 334 (1865)).

The Fifth Circuit also failed to consider that the district court's actions were equally illogical as it was forbidden, it took it upon itself to "modify" factual matters pertaining to defendants' *own* loan records and to the charges and demands *they personally made*, to which they found no need to correct. It did not consider that it was improper under the clear error standard or under any standard to replace plausible determinations with implausible findings. The district court's "modifications" and findings therefrom were irrational; its "in chambers" calculations inevitably supported

prior determinations that Cao was consistently demanded for overcharges that were never corrected.[26] It did not consider that the district court's modifications bear no relation and cannot change the fact that defendants terminated escrow in March 2011 and the existence of the Rule 11 agreement.[27] Nor does its "modifications" provide it jurisdiction to enforce the state court "settlement" agreement.[28] The Fifth Circuit did not acknowledge and resolve any relevant issues.

In sum, the Fifth Circuit's decision was arbitrary and capricious and it lack jurisdiction to affirm on grounds clearly not supported by requisite findings or the record and on issues not properly before it. Its judgment amounted to stonewalling Cao.

IV. Violation of Statutory Right to Appeal and Constitutional Rights to Due Process and Equal Protection

Cao was not heard, she was inexplicably shunned; her case was not decided, it was aggravated. The Fifth Circuit refused to consider any relevant issues, examine the record or even perform its minimum obligation to determine its jurisdiction. It apparently deemed Cao unworthy to be heard and defendants more credible

---

[26] *Angela Cao v. BSI Financial Services et al.*, No. 21-20073 (April 26, 2021) (Brief for Plaintiff-Appellant at 18-19).

[27] *Angela Cao v. BSI Financial Services et al.*, CV H-17-321 (S.D. Tex. October 15, 2020) (Dkt. 175 at 6) (Plaintiff's Motion for Reconsideration & Relief from Judgment).

[28] *Id.* at 13, § iii.

than Cao and the record itself. The district court exhibited the same disregard for Cao, it cared nothing to the fact that defendants failed to raise any affirmative defenses, yet called Cao "obtuse" for relying on the 2019 judgment when she asserted that material facts were established.[29] It inappropriately looked to clearly irrelevant evidence just to discredit Cao's correction of its error in finding that she owed for attorney fees. Then on the following sentence, it looked to the relevant evidence to support its "in chambers" calculations while blatantly ignoring that it unequivocally showed that attorney fees were included in the cure payment.[30] The lower courts' actions does not constitute equal rights to due process, it constitutes flagrant discrimination.

Federal courts exist to decide disputes of fact and to apply the law to the facts so found. Article III, § 1 et seq. In *Sprint Communications, Inc. v. Jacobs*, this Court has cautioned that if jurisdiction existed, "a federal court's obligation to hear and decide a case is virtually unflagging".[31] The lower courts did not provide Cao the minimal due process requirement of "notice and opportunity for hearing appropriate to the nature of the case" before depriving her of property. *Boddie v. Connecticut*, 401 U.S. 371 (1971) (quoting *Mullane v.*

---

[29] Fed. R. Civ. P. 8; *Angela Cao v. BSI Financial Services et al.*, No. 21-20073 (April 26, 2021) (Brief for Plaintiff-Appellant at 35).

[30] *Id.* at 14-20.

[31] 571 U.S. 69 (2013) (internal quotations omitted); (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)). In *Griffin v. Illinois*, this Court ruled that,

> "[t]here is no meaningful distinction as to due process and equal protection rights, which would allow the right to defend oneself in a trial court and adequate appellate review accorded to all. Appellate review is an integral part of the federal judicial system for finality in adjudicating cases and controversies, at all stages of the proceedings the due process and equal protection clause protect persons from invidious discriminations."[32]

Both the lower courts violated Cao's equal rights to due process and additionally the Fifth Circuit violated her statutory right to appeal.[33] This Court's supervisory power is needed.

V. Judgments Below Violated the Separation of Power Doctrine

The decisions below violated the principle of finality, requisite obligation to determine jurisdiction, and requirement of an actual case or controversy necessary for judicial power. The lower courts judgments must be vacated; they impermissibly lift limitations imposed by the Constitution and are prima facie decrees to aggrandize judicial power beyond Article III, in violation of the separation of power doctrine. "Federal courts

---

[32] 351 U.S. 12 (1956).

[33] U.S. Const. Amends. V; U.S. Const. Amends. XIV; Fed. R. App. P. 3; 28 U.S.C.

possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree; necessarily, then, the parties enjoy no more discretion to expand the federal courts' bailiwicks than the federal courts do." *Siding & Insulation Co., Inc. v. Acuity Mut. Ins. Co.*, 754 F.3d 367 (6th Cir. 2014); *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77, 108 S. Ct. 2268, 2271, 101 L. Ed. 2d 69 (1988). This Court's supervisory power is needed.

VI. Cao is Entitled to Summary Judgment as a Matter of Law

Summary judgment is warranted when the evidence reveals that no genuine dispute exists on any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A material fact is a fact that is identified by applicable substantive law as critical to the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To be genuine, the dispute regarding a material fact must be supported by evidence such that a reasonable jury could resolve the issue in favor of either party. *Anderson*, 477 U.S. at 248.

It is indisputable that Cao performed and there is no evidence of default, that each defendant made demands for excessive overcharges without correction, charged and received for fees and interest when none was due and rejected Cao's payments and filed for

foreclosure when she refused to pay the overcharges. It is indisputable that each defendant misrepresented the status and the amount Cao owed, misrepresented the character, nature and amount of fees, charges and interest assessed. The fact that defendants refused to cure and continued to take unlawful actions on a clearly false default, such as filing for multiple evictions after the 2019 judgment, alone exemplifies intent. These determined and undisputed facts entitle Cao to summary as a matter of law for: breach of contract; tortious breach of contract; fraud; FDCPA and TDCPA; quiet title; TTLA; money had and received; duress; violation for TX. Civ. P. Rem. § 12.002; and negligence and negligence per se.

The stigma and prejudices that befalls a pro se litigant in a mortgage foreclosure case has been seemingly insurmountable even after it was determined that she did not default. Seemingly, the courts and the public alike find it perverse to logic that a lender would refuse repayment and that rejection of payments is surely due to a feckless borrower defaulting. This is the exact thinking that defendants have exploited. In this case and at large, as explained on Cao's conspiracy claim, this logic is no longer applicable; profit for defendants and their partners lies in default. Precedents have held that, the quantum and qualities of proof required for materiality in a conspiracy claim are: (a) strongly supported inferences; (b) rational motive;

and/or (c) establishing an agreement-Plaintiff satisfied all three.[34]

The agreements show that defendants are part of a hedge fund comprising of members that finance, structure and manage mortgages and mortgage backed securities ("MBS"). The members conspired to engineer a financial structure to bifurcate an asset by separating its inalienable rights therein into two derivate properties-proprietorship to the proceeds of the asset and proprietorship to the management of the asset. Their aim was to seize control of the management, to amass charges against the assets through unfair debt collection practices, inducing default to trigger their swap options.

In owning a mortgage, a lender has the right to receive payments made by the borrower and the duty to manage the mortgage. Management of a mortgage includes but is not limited to, enforcing the deed of trust such as collecting payments, assessing for fees and other amounts, ensuring that the borrower maintains insurance and taxes and the authority to exercise the power of sale upon default. Management also includes maintenance of the loan account, the right to sell the mortgage or the foreclosure property and the right to hire contractors in the aid of management,

---

[34] *Iannelli v. United States*, 420 U.S. 770, 95 S. Ct. 1284, 43 L. Ed. 2d 616 (1975) (strongly supported inference); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 575, 106 S. Ct. 1348, 1350, 89 L. Ed. 2d 538 (1986) (rational motive); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557, 127 S. Ct. 1955, 1966, 167 L. Ed. 2d 929 (2007) (establishing agreement).

such as accountants and attorneys. A lender's duty to manage the mortgage is essential to receiving proceeds from it – one cannot receive if it does not collect. This duty, sold as a right to manage was carved out from the ownership of the mortgage and sold as separate property called, mortgage servicing rights ("MSR"). Carving out the title to create a derivative title in order to gain proprietorship over the management has disastrous and irreversible effects to the mortgage, the lien and title to the real property. To give perspective, consider the relationship between an investment property owner and a property management company. An owner has the right to select and hire a property management company to handle matters pertaining to the rental, such as executing lease agreements, collecting rent, enforcing and fulfilling its obligations under the lease and deal with any maintenance and repairs to the property including hiring contractors. This gives the property management rights to possess the property and the right to transfer possession to a renter. Property management companies usually charge a fee based on a percentage of the rent, thus, incentivizing it to manage the property well to ensure consistent market rent. Additional amounts for maintenance and repairs are typically reimbursed by the owner subject to prior approval. When a property management company carves out the title, transferring itself proprietorship to the management rights, it severs the owner's rights of possession; its derivative title owns the possession of the property in perpetuity. It shall control the property and all cash flow thereunder, extinguishing all the owner's liberties such as the right to

approve expenses and to terminate it. The same applies to a mortgage when proprietorship of the MSR was carved-out, the possession and control of the mortgage was severed which inevitably affected the interest in the property in a similar manner. Essentially, the lender owns rights under the note and the managers own rights under the deed of trust. These separate entities have different incentives, the lender, being those entitled to the repayment seeks profit from the interest made on the mortgage and those entitled to MSR seeks profit from its management of the mortgage.

Cao submitted direct evidence showing that since 2005, New Century carved out and transferred proprietorship of the MSR's from all the mortgages they originated to defendants. Cao submitted underwriting documents showing New Century transferring her mortgage to defendants immediately after origination in March 2007. Defendants', each of them, had rights to plaintiff's mortgage, her payments and her property from inception and she was interminably codependent on them to manage her contractual obligations.

These agreements further showed that defendants were never actually the "lenders", whether to plaintiff's individual mortgage or as a warehouse lender when her mortgage was securitized; no payment was intended or occurred. They passed the mortgage amongst each other with a blanket line of credit to pool, securitize and sell, delaying any payment exchange until amounts from the sale of the MBS's were received. This pass-through scheme allowed them to inflate the cost of the mortgages ("spread") while

levying debt against it. This is essentially a daisy chain of brokers that flipped an asset among each other for a higher price with credit to increase the purchase price for the actual end buyer. Thus, repayment of the loan was inconsequential to defendants. The agreements between defendants instead showed that they intended to use the MSR to engage in unfair debt collection practices, to induce default as means to acquire Cao's property. The indisputable facts show that they did exactly this.

When the members pooled and securitized the mortgages into MBS's and structured them to sell in a collateralized debt obligations ("CDO"),[35] they created a pooling and servicing agreement ("PSA"). The PSA entitled them, the managers, to a percentage of the

---

[35] CDO is a financial structure that houses the MBS's containing a feature that gives investors different class options. The different classes are segmented into tiers that alleged to dictate the priority in which payments will be applied (similar to boarding privileges on a plane between 1st class, business and economy). This payment scheme is called waterfall payment, which alleged to flow to Class A first, which must be fully satisfied before Class B is paid and B must be fully satisfied before the remainder is paid to Class R. To visualize the CDO and waterfall payment structure, imagine 3 boxes stacked on top of each other. The very top box (Class A) has an inlet valve to allow water (money) to flow into the structure and has an overflow valve connecting to the box below; this middle box (Class B) will also have an overflow valve connecting to the box below, the last box (class R). Flow of payments is equivalent to the water flowing into the inlet on top box and when it is filled, water will flow into the 2nd box via the overflow valve, then when the 2nd is filled, remaining amounts of water, if any, will flow into the overflow valve and into the last box.

aggregate monthly mortgage payments as compensation for their fees and additionally for amounts under the deed of trust such as late fees and default fees; these fees constitute amounts under the MSR. They then manufactured a nominal value for their MSR's based upon their spread and the amount of fees they speculated that they would receive in the future. The major factors in this valuation were estimated fees from default and accrued interest thereon due to their lowest payment position in the CDO. Despite the fact that the value for the MSR's are liabilities, anticipated expenses, against the mortgages, this nominal amount was added to the aggregate value of the CDO, competing with the MBS's for the same proceeds.

Defendants' MSR's interest constitutes the "Class R" certificates, having the lowest payment priority in the CDO. Investors' MBS's certificates, having a higher payment priority, represents an undivided interest (as a lender) to receive payments from the mortgage notes. Defendants did not have nor share the same interest in the mortgages as the MBS investors; their interest was separate and against the investors. Nor was the position they held, the lowest payment priority, a showing of good faith as to the integrity of the mortgages, as touted. They purposely placed the mortgages in a structure with two competing interests knowing that monthly cash flow would be insufficient to cover both repayment of the actual mortgages (to MBS investors) and their fees. They purposely held the lowest payment position, Class R, to ensure that their appraised fee amounts are left outstanding to accumulate interest at

a higher rate than the mortgages. Fee amounts constituting the percentage of expected monthly cash flows left unpaid will cause a lien on the pool of mortgages and amounts insufficient to cover default fees charged against the individual mortgage will cause an additional lien (bifurcated from the original) on the real property. Knowing that default was imminent, the members issued themselves credit default swaps ("CDS"), a form of credit insurance for their fee lien which allowed them to swap their fees for government guaranteed MBS's, as repayment in kind. In accordance to their agreements and as seen in this case, defendants will induce default by charging fraudulent fees, conduct a trustee's sale, foreclose and purchase the property with the MBS's they seized from the swap ("credit bid"). Relying on the clause embedded in the deed of trust, providing that all fees, costs and expenses associated with default to be paid first from the proceeds of foreclosure, defendants, having outstanding fees against the mortgage, took superior title to the real property. This is exactly what happened on plaintiff's mortgage and her property.

Defendants acted for *personal* gain, their actions are not conducive to that of rational lender nonetheless of highly sophisticated banks. It is not rational for a lender to reject credible payments, to obstruct Cao from repaying the loan and to cause undue costs and expenses from default. However, the fraudulent fees that caused default and the continuous charges for additional fees and other charges due to the default, were amounts forced to be borne by Cao, MBS investors and

the guarantors alike in which they were *personally* entitled to. Instead of liquidating and fully recuperating on an allegedly defaulted loan, by accepting cash bids that vastly exceeded the amount of the loan, they opted to credit bid for $463,180.05, an amount higher than the market value leaving the default fees, costs and expenses levied against the mortgage, outstanding and converted to superior claim to the property. This is not an act of a rational lender or one acting in the best interest of the lenders. Defendants took every action to incur massive debt against Cao's mortgage and her property to ensure that they increase their claim and maintain possession of her property, all the while, blaming, harassing and smearing Cao's reputation.

Defendants are nothing more than brokers that perversely inflated the value of an asset by attaching debt to it, and then ballooned the debt with fraudulent fees and interest thereon for a massive equity takeover by offset. Plaintiff, her mortgage, the MBS's thereunder and the CDO it was structured in was engineered to default. This is not a matter of what will or could happen; this is a matter of what did happen and appallingly still happening. Defendants conspired to land grab and used plaintiff and her mortgage as mere vehicles to manufacture and dump massive debt for acquisition. There were no baseless assertions or disputes made on the conspiracy claim, the district court's decision on not being "convinced" by direct evidence and indisputable facts strongly showing inferences is contrary to law. At summary judgment stage, its function was to determine whether there is a

genuine issue for trial and not weigh the evidence and determine the truth of the matter.[36] Cao is entitled to summary judgment on her conspiracy claim as a matter of law.

It is truly incomprehensible how defendants are seemingly immune to the law and beyond shocking that they are still licensed and approved as the main servicers for government sponsored entities such as Fannie Mae and Freddie Mac while allowed to have and to hold their MSR's interests in countless offshore accounts. This Court's supervisory power is urgently needed.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

ANGELA CAO
Petitioner, Pro Se
4003 Feagan, #1
Houston, TX 77007
Telephone: (281) 733-1243
E-mail: acao514@gmail.com

[36] Fed. R. Civ. P. 56(c), 28 U.S.C. *Anderson*, 477 at 202; *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *George v. Youngstown State Univ.*, 966 F.3d 446 (6th Cir. 2020).