No. 21-1578

IN THE

SUPREME COURT OF THE UNITED STATES

QUANNAH L. HARRIS - PETITIONER

VS.

OCWEN LOAN SERVICING, ET AL - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

QUANNAH L. HARRIS
2480 LENNOX DRIVE
GERMANTOWN, TN 38138
(901) 603-2764

QUESTIONS PRESENTED

1. Did the Court misapprehended the law and facts in affirming the District Court's decision to dismiss the fraud claims based on the failure to state a Claim? More specifically the Court erred factually in finding that the appellant failed to (a) failed to allege materiality, damages, fraudulent intent and reliance?

   (Answer: YES)

2. Did the Court misapprehended the law that

   Rule 9(b) prohibits a property owner from asserting a claim for fraud if they are in default of the loan?

   (Answer: YES)

3. Did the Court misapprehended the law that

   filing a Proof of Claim and the submission of fraudulent documents by an attorney in a bankruptcy case does not form the basis for a Fair Debt Collection Practice Act?

   (Answer: YES)

LIST OF PARTIES

PETITITONER

1. QUANNAH L. HARRIS

RESPONDENTS

2. OCWEN LOAN SERVICING
3. BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
4. SHARPIRO & INGLE, LLP

LIST OF RELATED CASES

- ***Harris vs Ocwen***, No. 2:18-cv-02631-MSN-tmp, United States District Court for the Western District of Tennessee. Judgment entered December 7, 2021.

- ***Harris vs Ocwen***, No. 21-5025, United States Court of Appeals for the Sixth Circuit Judgment entered February 7, 2022. Judgment affirmed March 23, 2022.

CORPORATE DISCLOSURE

Pursuant to Federal Rule of Appellate Procedure 26.1 and Sixth Circuit Rule 26.1, Appellant hereby make the following disclosures:

(1) Is said party a subsidiary or affiliate of a publicly owned corporation? **No.**

(2) Does a publicly owned corporation or its affiliate, not a party to the appeal, have a financial interest in the outcome? **No**

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

RULES

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 judgments below.

OPINIONS BELOW

1. The decision and opinion of the highest court to review the merits, The U.S. Court of Appeals for the Sixth Circuit, appears at Appendix A to the petition and is unpublished.

2. The decision and opinion of the trial court, The U.S. District Court for the Western District of Tennessee appears at Appendix B to the petition and is unpublished.

JURISDICTION

Pursuant to Rule 28(4) of the Federal Rules of Appellate Procedure, the appellant asserts the following basis of jurisdiction:

(A) The District Court for the Western District of Tennessee, Memphis, Division had original jurisdiction pursuant to 28 USC Section 1331, 1343 and 42 USCS Section 2000e-5

(B) The appellant timely appealed to the United States Circuit Court for the 6th on January 4, 2021, RE 56 to the 6th Circuit Court has appellate jurisdiction

pursuant to 28 U.S.C. § 1291 because the Plaintiffs are appealing a final judgment.

(C) The United States District Court entered its FINAL JUDGMENT on December 7, 2020. , RE 55. Accordingly, this Court has appellate jurisdiction pursuant to 28 USCS 1291 as the appellant is appealing from a final judgment that disposed of all claims of the appellant.

(D)The 6th Circuit entered its Order Affirming the decision of the United States District Court on the 7th day of February, 2022. Pursuant to Rule 40 of the Federal Rules of Appellate Procedure, Quannah Harris, pro se filed the Petition for Rehearing within 14 days of the Order of the Court. The 6th Circuit issued their order on April 1, 2022 Denying the Motion for Rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Constitutional and Statutory Provisions are involved:

1. U.S. Constitutional Amendment XIV · Section 1.

   [Citizens of the United States.]

2. Fair Debt Collection Practices Act · 15 U.S.C. § 1692e

STATEMENT OF THE CASE

The Court misapprehended the facts in affirming the District Court's decision to dismiss the fraud claims based on the failure to state a claim. More specifically the Court erred factually in finding that the appellant failed to failed to allege fraudulent intent, materiality, damages, and reliance.

The appellant, Quannah Harris has long maintained that she has long been subjected to deceptive and fraudulent practices as it relates to the mortgage servicing, despite the fact of default on the mortgage. This history of litigation has been ongoing since 2010. The actions of Shapiro in submitting the fraudulent document identified as the proof of claim, Step Rate Loan Modification with the clearly falsely contrived monthly statement in the bankruptcy court represents an additional act of fraudulent action by the players. This Court stated in its ORDER, (Case 2:18-cv-02597-JTF-tmp Document 61 Filed 02/07/22 Page 7 of 9 PageID 759) that:

> Harris merely alleged in a conclusory fashion, devoid of facts, that the defendants intended to defraud her. Nor did Harris sufficiently allege that Shapiro acted with fraudulent intent by merely alleging that Shapiro filed a proof of claim in her bankruptcy proceedings. Harris did not allege that Shapiro prepared the documents for the proof of claim or communicated with her directly at any time.

FRAUDULENT INTENT: The Sixth Circuit seems to find that the appellant did not allege any facts that Ocwen and Shapiro intended to defraud her. The appellant referenced not only the act of the fraudulent documents submitted through the proof of claim but the overarching actions of Ocwen, a servicer, to take property for

in the Bankruptcy Court only highlighted the dark history of the servicer and its attorneys to act, without regard to authority. The Court failed to give weight to paragraph 37 -52 (Complaint, ID 1, Page 16-20) of the nature of the fraudulent documents which included the proof of claim, modification agreements and the monthly accounting statement. Shapiro and Ocwen knew and/or should have known of the litigation history of the appellant and the submission of the Fixed Rate Modification Agreement from 2010 - 2017 in federal and state court (Complaint, ID 1, Page 6-12) which formed the basis of the defendant's defense. Even a cursory review of the monthly account statement showing the interest rate at 2.00% from 2016 - to 2017 when according to both Modification Agreements the interest rate was 4.7%. This alone should have alerted Shapiro of fraud in the monthly account statements showing a wanton recklessness in their actions, at the very least. The Court from 2010-2018 has refused to hold the servicers accountable contractually through deed or otherwise to show its authority to act on behalf of a silent owner - the Trust. The Step Rate Modification Agreement which was submitted in 2018 cleared the pathway for the servicer to act is not only highly suspect but evidence of fraud by the servicer and/or its lawyers to contractually support its actions. If this document, a legal document existed in 2010, then the failure to produce the same from 2010-2017 calls into question the validity of both modification documents and the veracity of the parties from 2010-2017. Within the

which they had no authority as servicer to take. The actions which occurred in 2018

four corners of the complaint, the plaintiff set forth averments of intent on behalf of Shapiro. [1] The Sixth Circuit Court in In Re Nicholas, 47 F.3d 1170 (6th Cir., 1995) interpreted "'fraudulent intent' to mean any more than an intent to defraud." If these parties came to the Court with clean hands, what would have hindered them from producing these documents that purportedly existed from 2010-2018, except an intent to defraud. The Court in Farnsworth v Nationstar Mortgage, LLC , a 2014 unpublished case set out the parameter for fraudulent intent under Rule 9(b) of the Federal Rules of Civil Procedure that the complaint must allege who made the false statement, when they were made, how they were made and the basis for the conclusion that that Nationstar knew the statement were false. Applying the standard in Nationstar, the appellant alleged that Shapiro and Ocwen submitted false documents (which were withheld from 2010 to 2018 to various Courts, if in existence) to the Bankruptcy Court as proof of claim and supporting documents. Moreover the appellant averred that Shapiro knew of the fraud because he received the full file from Ocwen to represent their interest in
Bankruptcy Court (which by the way was submitted to the appellant from Ocwen in 2018 after she disputed the debt) which included the varying modification

---

[1] From 2010 until the current date, the defendants Bank of NY Mellon Trust and Ocwen Loan and Shapiro intended to defraud the plaintiff in the mortgage herein referenced and by their intent and actions submitted a false/forged document to the U.S. Bankruptcy Court for the Western District of Tennessee for the purpose of carrying out their scheme. (Complaint ID 1, Page 20, Paragraph 51).

documents along with the false monthly statement. The appellant asserts that these factors were known based upon the documents that she received in response to the letter disputing the debt. In **McLaughlin v. Chase Home Fin. LLC** (6th Cir. 2013), the Court held that the McLaughlins failed to "allege any sort of detail or particularity regarding who made false representations, when such representations were made, or why such representations were intentional...." and as such the amended complaint was void of particularity as to the McLaughlins' claim for fraud and misrepresentation. To the contrary, the plaintiff clearly set forth the nature of the fraud within the four walls of the complaint which included wrongfully included interest within the principal balance; submission of fraudulent/ forged documentation that changed the definition of the lender and created a balloon note; created another forged/false modification agreement that purportedly governed the basis for the monthly account statements; and represented false facts to the U.S. District Court, the U.S. Bankruptcy Court, the 6th Circuit and the Shelby County State Court from 2010 - to 2019. misleading which included the Fixed Rate Modification Agreement and the Step Rate Modification Agreement.

In the step rate modification agreement, the principal amount was separated that accrued interest and charges until the maturity date of the loan - at which time the $80,000.00 plus accrued interest would be tendered. The defendant attempts to describe the 2nd modification agreement as beneficial simply because the interest

rate for four years was decreased to 2.00000% from 2.62500%. Applying the standards set forth in McLaughlin, the appellant has met the threshold of pleading detail and particularity as it relates to fraud. FRCP 9(b) requires that fraud be pleaded with particularity. To satisfy FRCP 9(b), a plaintiff must at minimum allege the time, place and contents of the misrepresentation(s) upon which he relied. **McGinty v. Beranger Volkswagen**, Inc., 633 F.2d 226, 228 (1st Cir.1980); **Bosse v. Crowell Collier and Macmillan,** 565 F.2d 602, 611 (9th Cir.1977); **Windsor Associates, Inc. v. Greenfeld**, 564 F.Supp. 273, 280 (D.Md.1983). **Bender v. Southland Corp.,** 749 F.2d 1205 (6th Cir., 1984).

In the complaint, the plaintiff alleges as to time, place and content of the misrepresentation:

(1) February 9, 2010 until February 15, 2018, Ocwen Loan Servicing represented that the loan modification agreement was governed by the Fixed Rate Loan Modification Agreement. Doc. 1 Paragraph 37.

(2) The fixed rate modification agreement was the subject of litigation from 2012 to 2017. Doc. 1 Paragraph 41.

(3) 2/15/18, the plaintiff filed a Chapter 13 bankruptcy and the defendant Ocwen Loan and Shapiro and Ingle filed a proof of claim attaching the Step Rate Modification Agreement dated May 9, 2010. Doc. 1 Paragraph 42.

(4) Prior to May 9, 2010, the plaintiff had never seen or been presented with the document identified as the Step Rate Modification Agreement. Doc. 1 Paragraph 43.

(5) The modification agreement identified as the Step Rate Modification Agreement changed the lender/owner to include the agent/servicer, Doc. 1 Paragraph 44; changed the principal balance to include a deferred /balloon balance payable at maturity with accruing interest and changed the increment increasing interest rate.

(6) The Plaintiff asserts that she nor her husband signed their name to the Step Rate Modification Agreement; that the notary purported to affix her seal with the required acknowledgment pursuant to Tennessee Code Annotated 66-22-107 Doc. 1 Paragraph 47__ and nor was there a lender acknowledgment clause.

(7) From 2010 until the current date the defendants Ocwen Loan and Shapiro intended to defraud the plaintiff in the mortgage referenced and by their intent and actions submitted a false/forged document to the US Bankruptcy Court for the purpose of carrying out their scheme. Doc. 1 Paragraph 51

(8) July 25, 2018...Ocwen Servicing and the Trust submitted a letter of notice of dispute. The plaintiff made a request for validation of the loan. Ocwen and the Trust submitted the Step Rate Loan 15 Case 2:18-cv-02597-JTF-

tmp Document 50 Filed 03/24/19 Page 15 of 23 PageID 671 Modification and the Fixed Rate Loan Modification along with Mortgage Account Statement. The Mortgage Account Statement dated for 5/23/18 showed an interest rate of 2.00000% which in accordance with any agreement is erroneous, contrived and fraudulent and not in line with an agreement. Doc. 1 Paragraph 54.

(9) The defendants submitted the false forged documents in anticipation that the plaintiff and others would rely upon their truth and veracity that the servicer in their name had the authority to enforce the agreement and that the monthly

(10) demands for payments were in fact based upon an enforceable agreement. Doc. 1 Paragraph . 55.

(11) As a result of the fraud perpetrated upon the plaintiff and the Courts, in which they both relied, the plaintiff's claims were denied by the U.S. Western Distrcit Court, the Sixth Circuit, and State Chancery Court based upon false statements. Doc. 1 Paragraph 56.

(12) The plaintiff has suffered damages resulting from the threats to the taking of her home, false debt reporting, fear, anxiety and stress. Doc. 1 Paragraph 57 . Based upon the foregoing, we pray the Supreme Court reconsider its ruling that the appellant failed to properly plead fraud under Rule 9 of the FRCP.

INJURY: The Sixth Circuit Court in its ORDER at Document 61 Filed 02/07/22 Page 7 of 9 PageID 759 wrote that:

> Harris admittedly defaulted on her home loan and did not plausibly allege that any misrepresentations by the defendants, rather than that default, resulted in the foreclosure proceedings against her home and her unsuccessful suits to prevent the foreclosure. See **Dauenhauer v. Bank of N.Y. Mellon**, 562 F. App'x 473, 482 (6th Cir. 2014) (per curiam) (holding that borrowers failed to satisfy Rule 9(b)'s heightened pleading standard for their fraud claim where they failed to show that they were not in default and that the note holder had no right to foreclose regardless of any alleged misrepresentations).

The appellant painted a clear picture of the scheme of the defendants and their unlawful actions to hold the appellant in default without authority to foreclose. The appellant's battle cry has always been that the appellee's were without authority to act to foreclose on the property. The fact that the appellant may have been in default does not clear the pathway for a "bogus" entity to seek to take the property without authority.

The appellant in her complaint averred that 18 the fixed rate modification agreement was the subject of litigation from 2012 to 2017 in which the plaintiff attempted to assert that modification agreement was fraudulent. (Case 2:18-cv-02597-JTF-tmp Document 1 Filed 08/30/18 Page 17 of 26 PageID 17, Paragraph 41).

From February, 2010 until the date the defendant Ocwen Loan Servicing Bank of Mellon Trust submitted the Step Rate Modification Agreement the plaintiff

relied upon the modification agreement identified as the Fixed Rate Modification Agreement, generally and more specifically in the litigation and/or defense of the claims. (Case 2:18-cv-02597-JTF-tmp Document 1 Filed 08/30/18 Page 19 of 26 PageID 19, Paragraph 48)

From 2010 until the current date, the defendants Bank of NY Mellon Trust and Ocwen Loan and Shapiro intended to defraud the plaintiff in the mortgage herein referenced and by their intent and actions submitted a false/forged document to the U.S. Bankruptcy Court for the Western District of Tennessee for the purpose of carrying out their scheme. (Case 2:18-cv-02597-JTF-tmp Document 1 Filed 08/30/18 Page 20 of 26 PageID 20, Paragraph 51).

The appellant clearly sets forth the injury she suffered as a result of the scheme of the appellees in her complaint. The plaintiff suffered actual damages as a result of the action of the acts of the defendant which included continuous foreclosure actions, false statements in defense of litigation, mental and emotional distress. (Case 2:18-cv-02597-JTF-tmp Document 1 Filed 08/30/18 Page 24-25 of 26 PageID 24-25, Paragraph 79).

In the United States ex rel Bledsoe v. Cmty. Health Sys., Inc., 501 F.3d 493, 502 (6th Cir.2007) ('Bledsoe II') the Court found that under Rule 9(b), a plaintiff must 'allege the time, place, and content of the alleged misrepresentation ... the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud.' Id. at 504." The appellant has clearly suffered by the actions of the

appellees who seek to substitute themselves as the Lender, without a basis in contract or otherwise.

1. **The Court misapprehended the law that Rule 9(b) prohibits a property owner from asserting a claim for fraud if they are in default of the loan and that default on the loan cancels out materiality.**

DEFAULT: The Sixth Circuit Court cites Dauenhauer v Bank of N.Y. Mellon, 562 F. App'x 473, 482 (6th Cir, 2014) for the proposition that due to the appellant's default that she had no standing for a claim of misrepresentation wherein she was in default. Yet the Court in Dauenhauer referenced the fact that the plaintiff did not allege whether the Note holder had the right to initiate foreclosure proceedings. The appellant's position is that Ocwen and other loan servicers did not have the authority to initiate foreclosure procedure based upon their continuous and ongoing fraudulent scheme regardless of the default of the appellant. The issue that the appellant cannot show materiality due to default.

In U.S. v. McAuliffe, 490 F.3d 526 (6th Cir. 2007) the Court addressed materiality. According to U.S. v McAuliffe, " materiality of falsehood is a requisite element of mail fraud. Neder v. United States, 527 U.S. 1, 25, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). The misrepresentation "must have the purpose of inducing the victim of the fraud to part with the property or undertake some action that he would not otherwise do absent the misrepresentation or omission." United States v. Daniel, 329 F.3d 480, 487 (6th Cir.2003). A misrepresentation "is material if it has a natural tendency to influence, or is capable of influencing,

the decision of the decision-making body to which it was addressed." Neder, 527 U.S. at 16, 119 S.Ct. 1827 (internal citation and quotation marks omitted)." The appellant engaged in useless litigation based upon the false submission of the servicers in their aim to foreclose upon the property without authority. The appellant relied upon these documents as the basis for their authority when in reality, the servicers had in fact no authority to enter into said agreements which transcended their authority.

2. **The Court misapprehended the law that filing a Proof of Claim by an attorney in a bankruptcy case does not form the basis for a Fair Debt Collection Practice Act.**

The assertion that Midland Funding v Johnson 137 S. C. 1407 (2017) supports their position that a debt collector does not engage in "unfair" or "unconscionable" conduct in violation of the FDCPA by the filing of a proof of claim. The appellant asserts not only that the proof of claim was false, she specifically says that the documents supporting the proof of claim were fraudulent and a forgery. Some of these documents were submitted as billing statements and as such stand alone. Yet the 6th Circuit Court completely overlooks that Ocwen submitted these same documents after the Bankruptcy was dismissed in violation of the Fair Debt Collections Act. In citing Simmons v Roundup Funding, LLc, 622 F.3d 93 (2nd Cir. 2010) the 6th Circuit joins the 2nd Cir in finding that the FDCPA was not intended to bypass the protections under the Bankruptcy Code. Yet the fact remains that the rights under the Bankruptcy

Code and the FDCPA are available to debtors both inside and outside of Bankruptcy wherein the creditor and their attorneys engage in fraudulent actions and actions directly in contravention of statutory and regulatory laws.

The appellant petitions the Supreme Court for rehearing on the issue of the viability of the complaint in alleging fraud under Rule 9(b) of the Rules of Civil Procedure and the applicability of the Fair Debt Collection Practices Act to the filing of the proof of claim and the attached documents inclusive of the Modification Agreement and the accounting statements.

Additionally Harris would like to appeal the issue of reliance. In the U.S. Distict Court, Judge Folkes stated:

> Plaintiff has not provided facts supporting the assertion that she relied on Defendants' alleged misrepresentations. Plaintiff's Complaint mentions reliance twice. First, Plaintiff states simply that she "relied upon the representation" that the First Loan Modification Agreement was operative. (*See* ECF No. 1, 6 ¶ 13.) Second, Plaintiff states that she relied on the alleged representation that the First Modification governed in conducting the prior litigation.

Based on the Representation, Harris In an action under the FTC Act, it need only be shown that a defendant engaged in a material misrepresentation or omission that was likely to mislead reasonable consumers. FTC v. Peoples Credit First, LLC, 244 F.App'x. 942, 944 (11th Cir. 2007) (citing FTC v. Tashman, 318 F.3d 1273, 1277 (11th Cir. 2003)). As Court already established, Harris relied on the falsified documents in the prior litigation. Comparing the Loan Modifications, monthly statements, and the documents submitted during bankruptcy, not only is it

forgery and fraud, but is also an inconsistency in the rates which is also a breach of any alleged contract.

REASONS FOR GRANTING THE PETITION

1. The courts Ruled the Respondents should not be held in violation of the FDCPA because they reasonably relied upon the records provided by Ocwen and/or the Trust. That effectively would grant corporate entities and others the right to defraud and commit other actions of misrepresentation and deny due process to homeowners simply because they were in default of their mortgage. The balance of the arguments submitted by the defendants have no basis in law or fact.

2. The Courts erred in not ruling that the respondent's gross violation of the FDCPA by false, deceptive and misleading representation in connection with the collection of any debt under 15 USCS 1692(e). The fact that the plaintiff is in default on the loan is not a defense to the actions of collection through false and deceptive actions. The FDCPA forbids a debt collector from making a false representation of "the character, or legal status of any debt." 15 U.S.C. § 1692e(2)(A) Aycock v. Bank of Am., N.A. (W.D. Tenn., 2015).

3. The Sixth Circuit conflicts with the Supreme Court in Spencer v. Kemna, 523 U.S. 1, 17 (1998)) in failing to apply the capable-of-repetition doctrine thereby directly conflicting with this Court directly.

4. The Court misapprehended the law and facts in affirming the District Court's decision to dismiss the fraud claims based on the failure to state a Claim? More specifically the Court erred factually in finding that the appellant failed to (a) failed to allege materiality, damages, fraudulent intent and reliance?

5. The Court misapprehended the law that Rule 9(b) prohibits a property owner from asserting a claim for fraud if they are in default of the loan?

6. The Court misapprehended the law that filing a Proof of Claim and the submission of fraudulent documents by an attorney in a bankruptcy case does not form the basis for a Fair Debt Collection Practice Act.

CONCLUSION

The appellant petitions this Court for a Writ of Certori on the issue of the viability of the complaint in alleging fraud under Rule 9(b) of the Rules of Civil Procedure and the applicability of the Fair Debt Collection Practices Act to the filing of the proof of claim and the documents inclusive of the Modification Agreement and the accounting statements. The judgment of the court of appeals should be vacated and the case remanded for further consideration.

Dated: the 13th day of June, 2022

Respectfully Submitted,

Quannah Harris
2480 Lennox Drive
Germantown, TN 38138
(901) 603-2764