

# In the Supreme Court of the United States

Supreme Court, U.S.  
FILED

DEC 20 2021

OFFICE OF THE CLERK

Stewart Hines, Sole Beneficiary, and  
Sole Trustee of Forbes-Robertson Group,  
Petitioner

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Case # 21-6025

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Petition for Rehearing

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v.

Gwendolen C. Nelson,  
Respondent

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Stewart Hines, sole Beneficiary and sole Trustee of Forbes-Robertson Group (Hereinafter, 'Forbes') moves this court to grant a Rehearing to prevent the final act in a severe miscarriage of justice.

In light of the Court's holdings in Harris Trust and Savings Bank v. Solomon Smith Barney, Inc., 530 U.S. 238 S. Ct. (2000),:

"A trustee or beneficiaries may maintain an action for restitution of [trust] property."

## CLARIFICATION OF THE FACTS IN 'STATEMENT OF THE CASE'

The underlying Civil Action for the recovery of Forbes Real Property was filed on February 7, 2018. (See Appendix D.)

The State Civil Action was filed by Forbes (Former) Managing Fiduciary Party/ Trustee, Joseph Ruben Hill. (Hereinafter, 'Hill'.)

The State Civil Action involves 4 Fraudulent Deed Transfers of Forbes Real Property, valued at \$400,000 to \$500,000, by the Respondent, to the Respondent's possession executed for No Consideration.

Said Fraudulent Transfers occurred without Forbes's (Former) Trustee Hill's knowledge. (See Appendix D.)

At the time of the Fraudulent Deed Transfers, both Respondent and Petitioner were Managing Agents of Forbes. The Petitioner has always been Forbes sole Beneficiary. (See Appendix D.)

As Managing Agents, both the Respondent and Petitioner breached their Fiduciary reporting Duties to Former Managing Fiduciary/Trustee, Joseph Ruben Hill, by failing to notify him of the deed transfers of Forbes Real Properties. This constituted Fraudulent Concealment.

When the Underlying State Civil Action was filed, February 7, 2018, Forbes consisted of three individuals:

1. Joseph Ruben Hill, Managing Fiduciary Party/Trustee, Plaintiff.
2. Stewart Lyle Hines, (Current Petitioner), Managing Agent and Sole Beneficiary.
3. Gwendolen Cleopha Nelson (Respondent), Managing Agent, Defendant

When the complaint was filed in the Underlying State Civil Action, the (former) Managing Fiduciary Party and Trustee, Joseph Ruben Hill discharged the Respondent from her position in Forbes. (See Appendix D.)

During the Pendency of the Underlying State Civil Action, Plaintiff Joseph Ruben Hill, Forbes (former) Managing Fiduciary/Trustee could not be reached. As such, Petitioner Hines's Interests were inadequately protected.

On September 25, 2019, the Petitioner requested the State Trial Court to Remove and Replace Joseph Ruben Hill as Trustee of Forbes. No court action was taken.

On October 8, 2019, Forbes (former) Trustee, Joseph Ruben Hill, resigned from Forbes and appointed the Petitioner (Hines) the succeeding Managing Fiduciary Party/Trustee. (See Appendix G.)

On November 12, 2019, Forbes (former) Trustee, Joseph Ruben Hill filed his resignation from Forbes with the State Trial Court. Hill's filings requested the State Trial Court make the Petitioner Forbes succeeding Managing Fiduciary Party and Trustee and Plaintiff in the underlying State Civil Action.

Hill's Nov. 12 filings with the State Trial Court unequivocally established that the Petitioner was Forbes's sole member, sole Trustee and Sole Beneficiary, and the ONLY person who could maintain the underlying State Civil Action as Plaintiff.

According to SDCL 15-6-25(d)(1) (Fed Civ P. 25(d)(1)), Petitioner Hines's substitution should have been "Automatically Substituted".

On November 13, 2019, the State Trial Court held a Motions Hearing to hear the Respondent's Motion for Summary Judgement. The Petitioner appeared Pro Se on behalf of Forbes, as Forbes's sole Trustee and sole Beneficiary. Petitioner attempted to intervene as Substituted Plaintiff. (See Appendix B.)

At the November 13, 2019 Motions Hearing the following exchange occurred between the Petitioner and the State Trial Court at TR 7:7-24;

Mr. Hines: I would like to submit to the court something that just came to me, and I copied it this morning and brought it in. I didn't know if you would - -and it's Mr. Hill's resignation, dated the 8<sup>th</sup> of last month - - and again, I just received this - - and appointing me as the Trustee. So, I would have standing in this issue.

The Court: Okay. And, you know, I would note, just based on that, the parties are the parties named unless the court changes that designation, and this would be, in the court's opinion, of No Effect in regard to this issue here.

The issue I'm deciding right now isn't even a standing issue, But - - And I don't even think I'm going to reach the issue right now of whether a Power of Attorney has the authority to act as a Pro Se representation for the principle for these purposes. I'm going to take that under advisement, and I'm taking your Motions under advisement. (See Appendix B.; Transcripts.)

After the November 13, 2019 Motions Hearing, the State Trial Court set another hearing date for January 8, 2020. (See Transcripts)

On December 19, 2020, the Petitioner timely filed 'Motion to be Substituted as Plaintiff Party' according to SDCL 15-6-25(c) (Fed R. Civ.P. 25(c)) and filed an objection to the defendant's 'Motion for Dismissal and Summary Judgement.' (See Appendix D.)

The State Trial Court did not review the Petitioner's timely motions filed December 19, 2019.

Despite setting a January 8, 2020 Hearing Date, on December 26, 2019, the State Trial Court dismissed the underlying State Civil action on the merits according to SDCL 15-6-41(b) (Fed.R.Civ.P. 41(b)). (See Appendix B.)

In the State Trial Court's December 26, 2019 dismissal, the court states;

**“Because the court finds neither Mr. Hines nor Mr. Hill have the authority to appear Pro Se on behalf of the Trust, the court finds that the plaintiff has failed to diligently prosecute its claim and comply with the rules of civil procedure and this court pursuant to SDCL 15-6-41(b) enters a Judgment of Dismissal.”  
(See. Appendix B)**

**Petitioner’s post Judgment Motion for Intervention and Reconsideration was denied by the State Trial Court. The South Dakota Supreme Court affirmed and also denied the petitioner’s Request for a Rehearing. (See Appendix A., C., D.)**

**\*All of the facts above are within the petitioner’s Petition for Writ of Certiorari.**

**CLARIFICATION OF THE LEGAL ARGUMENT WITHIN ‘REASONS FOR GRANTING THE PETITION’**

**Unequivocally, the Petitioner should have been substituted as the Plaintiff party as a matter of law. Since Hill had given the State Trial Court actual notice of his resignation from Forbes, Hill should no longer have been named as Plaintiff.  
(See. Appendix B)**

**As a matter of law, the petitioner could have represented Forbes Pro Se as Forbes’s sole member, beneficiary, and trustee.  
(See. Tenpenny v. United States, 490 F. Supp. 2d 852 (N.D.O.H. 2007) at 863;  
Olisa Pound v. Purdue Univ. 2014 U.S. Dist. Lexis 187484 (N.D.N.M. 2014)  
Lengthy citations from these cases are within the petitioner’s ‘Reasons for Granting the Petition’.**

**As a matter of law, the Petitioner, as Forbes sole member, beneficiary, and trustee, was the Party in Interest under SDCL 15-6-17(a) (Fed.R.Civ.P. 17(a)) at the State Trial Court’s December 26, 2019 Dismissal.**

**This means, as a matter of law, the State Trial Court erroneously dismissed the underlying State Civil Action ‘on the merits’ while the petitioner was the Real Party in Interest pursuant to SDCL 25-6-17(a) (Fed.R.Civ.P. 17(a)) and automatically substituted as Plaintiff pursuant to SDCL 15-6-25(d)(1) (Fed.R.Civ.P.25 (d)(1)). (See Appendix B.)**

**This is why the Petitioner’s Writ of Certiorari presented the following questions to the Court:**

**-Whether a Sole Beneficiary and Trustee may represent that trust Pro Se.**

Whether the State Trial and State Appellate Courts' refusal to substitute the Petitioner as Plaintiff Party violated the Petitioner's Right to Access the Courts under the First Amendment and Right to Due Process under the Fourteenth Amendment.

In *Harris Trust + Saving Bank v. Solomon Smith Barney, Inc.*, 530 U.S. 238 S.Ct. (2000), this Court stated;

[Hn20] "It has been settled that when a Trustee, in breach of his fiduciary duty to the Beneficiaries, transfers Property to a Third person, the Third Person takes the Property subject to the Trust unless he has purchased the property for value and without notice of the Fiduciary's Breach of Duty. The Trustee or the Beneficiaries may then maintain an action for Restitution of the Property."

In this case, the SD State Courts completely barred the Petitioner from addressing the MERITS of Forbes fraudulently transferred Real Property, valued at 400K to 500K. These Fraudulent Deeds have in no way been addressed.

Additionally, the Petitioner has had to bear litigation costs' including the Respondent's State Appellate Court Costs.

- All of the above facts, cases, and legal arguments are already within the Petitioner's Petition for Writ of Certiorari.

Therefore,

Without this Court's Intervention, a severe miscarriage of Justice will be Final.

Wherefore,

The Petitioner prays this Court will review the Petitioner's Writ of Certiorari and consider the issues of law raised therein.

The Petitioner asks this Court to grant this Petition for Rehearing and remand it to the State Courts. [see attached]

Respectfully Submitted this \_\_\_\_ Day of January 2022.

  
Petitioner

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Stewart Hines, Sole Beneficiary, and  
Sole Trustee of Forbes-Robertson Group,  
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v.

Gwendolen C. Nelson,  
Respondent

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Case # 21-6025

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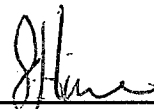
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I, Stewart Hines, sole Beneficiary and sole Trustee of Forbes-Robertson Group (Hereinafter 'Forbes') hereby states the following in support of my Rehearing to this Court;

That the Petitioner's request for a hearing is in good faith and is not designed to delay or infringe upon the rights of the Respondent.

That the current disposition of this Court has resulted in the completion of the severe miscarriage of justice due to the denial of the Petitioner's First Amendment right to access the courts and to due process under the Fourteenth Amendment.

Respectfully Submitted this 4<sup>th</sup> day of January 2022



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Petitioner