21-8

CASE NUMBER

ORIGINAL

IN THE UNITED STATES SUPREME COURT

IN RE: WILMA PENNINGTON-THURMAN

DEBTOR

WILMA PENNINGTON-THURMAN

PETITIONER

vs.

FEDERAL HOME LOAN MORTGAGE CORPORATION,

MILLSAP & SINGER, LLC,

BANK OF AMERICA, N. A.

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Wilma Pennington-Thurman

P. O. Box 771201

St. Louis, Missouri 63177

314 566-2106

QUESTION(S) PRESENTED

1. A finding of fraud on the court is reserved for material, intentional misrepresentations that could not have been discovered earlier.

Do instances discovered in 2021 after settlement of 2010 rise to the level of fraud on the court under Rule 60(d)(3), whereas a bankruptcy judge presiding over debtor's bankruptcy case for eleven years did not recuse himself while he was working closely with an Attorney that is an Attorney with the law firm representing debtor's creditor during most of that time?

2. Congress did not authorize a "rare case" exception that permits courts to disregard priority in structured dismissals for "sufficient reasons." The fact that it is difficult to give precise content to the concept of "sufficient reasons" threatens to turn the court below's exception into a more general rule, resulting in uncertainty that has potentially serious consequences—e.g., departure from the protections granted particular classes of creditors, changes in the bargaining power of different classes of creditors even in bankruptcies that do not end in structured dismissals, risks of collusion, and increased difficulty in achieving settlements. Courts cannot deviate from the strictures of the Code, even in "rare cases." Pp. 16–18. See CZYZEWSKI ET AL. v. JEVIC HOLDING CORP. ET AL. 15-649 (2017)

The Code makes clear that distributions in a Chapter 7 liquidation must follow this prescribed order. §§725, 726. Id

Why were these cases in Federal Court, Eastern District of Missouri treated as an unusual "rare case" justifying deviation from the ordinary priority rules? Same parties, same controversy. Denied or dismissed:

1. Case No. 20-1993

4:19-CV-03093-HEA Denied/Affirmed

2. Case No. 1509

4:18-CV-01405-HEA

3. Case No. 17-266

4:15-CV-00381-RLW

4. Case No. 16-6010

Bankruptcy case: 09-46628

5. Case No. 3168

4:15-CV-00381-RLW

6. Case No. 13-3483 Bankr Appellate Panel 13-6023

Bankr. 09-46628

7. Case No. 13-6023

Bankr. 09-46628

3. The preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute, which provides that state judicial proceedings "shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State . . . from which they are taken." 28 U.S.C. § 1738 . This statute directs a federal court to refer to the preclusion law of the State in which judgment was rendered. "It has long been established that § 1738 does not allow federal courts to employ their own rules of res judicata in

determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken." *Kremer* v. *Chemical Construction Corp.*, 456 U. S. 461, 481-482 (1982); see also *Allen* v. *McCurry*, 449 U. S. 90, 96 (1980).

Why would Debtor's bankruptcy Trustee be in defiant of § 1738, co-author and sign a "Joint Motion to Dismiss" filed in state court, authorizing dismissal with prejudice of adjudicated state court cases placed in the estate of debtor ?

4. In most cases, creditors cannot take action against a debtor's property until the bankruptcy is closed. See 11 U.S.C. § 554(c). With respect to property of the estate, the stay lasts until the property is no longer part of the bankruptcy estate. See 11 U.S.C. § 362(c)(1)

Is it a violation of the 14th Amendment Due Process protection for The Bankruptcy Trustee and Bankruptcy Judge to allow the State trial court proceeding to continue in favor of the creditor?

LIST OF PARTIES

[X]All parties appear in the caption of the case on the cover page.

[ ]All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court shoes judgment is the subject of this petition is as follows:

RELATED CASES

Case No. 20-1993

Case No. 09-46628-399

Case No. 19-04175

Case No. 4:19-CV-03093

Missouri State Court

1822-CC00875-01

1822-CC00875-02

ED109198

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TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUES AND RULE

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[X]For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is
[]reported at; _____or,
[]has been designated for publication but is not yet reported; or,
[]is unpublished.
The opinion of the United States district court appears at Appendix B to the petition and is
[] reported at_____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.
[] For cases from state courts:
[] The opinion of the United States court of appeals at Appendix C to the Petition and is unpublished
[] The opinion of the United States Bankruptcy Court appears at Appendix D To the petition and is unpublished

The opinion of the highest state court to review the merits appears at Appendix _____to the petition and is
[]reported at_____; or,
[]has been designated for publication but is not yet reported; or,
[]is unpublished.
The opinion of the_____ court appears at Appendix_____ to the petition and is
[]reported at_____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[X]For cases from federal courts:

The date on which the United States Court of Appeals decided my case was February 10, 2021

[]No petition for rehearing was timely filed in my case.

[X]A timely petition for rehearing was denied by the United States Court of Appeals on the following date:, March 30, 2021 and a copy of the order denying rehearing appears at Appendix C.

[]An extension of time to file the petition for a writ of certiorari was granted to and including_____ (date) on_____ (date) in Application No._____ A_____.

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

For cases from state courts:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix_____.

[] A timely petition for rehearing was there after denied on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____.

[]An extension of time to file the petition for a writ of certiorari was granted to and including_____ (date) on_____ (date) in Application No._____ A._____

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S. Code § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The Civil Rights Act of 1964

Statutes at Large: 78 Stat. 241

The **Civil Rights Act of 1964** prohibits discrimination on the basis of race, color, religion, sex or national origin. ... The **Act** prohibited discrimination in public accommodations and federally funded programs. It also strengthened the enforcement of voting **rights** and the desegregation of schools.

28 U.S. Code § 455 - Disqualification of justice, judge, or magistrate judge

(a)

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1)

Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2)

Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it

28 U.S. Code § 157 – Procedures

(c) (1)

A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2)

Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

11 U.S. Code § 362 - Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—
(1)
the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
(2)
the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3)
any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
(4)
any act to create, perfect, or enforce any lien against property of the estate;
(5)
any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
(6)
any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
(7)
the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—
(1)
the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate

STATEMENT OF THE CASE

"The Judicial Power of the United States must be exercised by courts having the attributes prescribed in Art. III." Quote from *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982) *Id.* at 57-58. Holding, The U. S. Bankruptcy Courts could not exercise the full powers of the Article III court.

This case evolves around Petitioner's bankruptcy case from 2009 filed in the U. S. Bankruptcy Court Eastern District of Missouri. This case has been consumed by fraud and has been around for twelve years. It involves questions of law pursuant to Federal Rules of Civil Procedure Rule 60 (b)(4) and Rule 60 (d)(3), 11 U.S. Code § 362 - Automatic stay, and 28 U.S. Code § 157 (c)(1)(2) Procedures.

As the Supreme Court has stated, "the requirement of finality is to be given a `practical rather than technical construction.' . . . the most important considerations are `the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other.'" *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152-53, 85 S.Ct. 308, 311, 13 L.Ed.2d 199 (1964).

The cases I listed in the Questions Presented have all been denied or dismissed by the Federal Courts because of who I am. It does not matter if I quote the law and principals correctly, according to this court's opinions, my appeals are always dismissed or denied. I do not have to make this up. Look at the cases for yourself. That is just the federal cases. There are state court cases that are related to all the federal cases listed in the Questions Presented. (They will be listed in the Appendix)

When the Eighth Circuit Court of Appeals denied or dismissed one of my cases I would appeal to the U. S. Supreme Court. On the Supreme Court docket is four cases related to this appeal. One is a Writ of Habeas Corpus. The writ of habeas corpus is one of what are called the "extraordinary", "common law" or "prerogative writs", which were historically issued by the English courts. The most common of the other such prerogative writs are quo warranto, prohibito, mandamus, procedendo, and certiorari. I have filed a writ of mandamus and several writs of certiorari in this court. All pertaining to the racist scheme set forth back in 2009 in Missouri civil court manifesting it way to the federal courts.

I would not have file a writ of habeas corpus not unless the situation was serious, and my liberty was in jeopardy. (Danger of loss, harm, or failure)

The U. S. Supreme Court dismissed my writ of habeas corpus as: "The motion for leave to proceed in forma pauperis is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8." See docket for 18-5400.

The question presented in the writ was: "In re to Wilma Pennington-Thurman, can I file "The Great Writ" a Writ of Habeas Corpus when I am not physically incarcerated, but mentally incarcerated by those in authority?" This is a quote from the writ of habeas corpus:

"When those in authority oppress you, they are putting a restraint on your Liberty while they are clothed in the color of law and hide behind qualified immunity. When you are discriminated against you are immediately consciously put in bindings as though you are convicted of being who you are. You feel captive held in custody of an improper violation of your Liberty. You do not feel free to pursue life as it should be. I have witness this. I have felt this. I feel like bricks are on top of me. Discrimination is a heavy burden. It is thrown upon you like a bucket of water, tossed at you, but the bucket is filled with dirty water that is hard to scrub off. You try to scrub it off with Constitutional laws. Constitutional laws are supposed to wash this away, but the soap breaks in half and then into pieces. It is hard to get the dirt off. There you are scrubbing with little pieces trying to get you liberty to shine again." In re Wilma Pennington-Thurman

This does not define "liberty". So many of us feel like this every day.

"Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect. *Korematsu v. United States*, 323 U.S. 214, 216, 65 S.Ct. 193, 194, 89 L.Ed. 194; *Hirabayashi v. United States*, 320 U.S. 81, 100, 63 S.Ct. 1375, 1385, 87 L.Ed. 1774. As long ago as 1896, this Court declared the principle 'that the constitution of the United States, in its present form, forbids, so far as civil and political rights are concerned, discrimination by the general government, or by the states, against any citizen because of his race." *Gibson v. Mississippi*, 162 U.S. 565, 591, 16 S.Ct. 904, 910, 40 L.Ed. 1075. Cf. *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 198—199, 65 S.Ct. 226, 230, 89 L.Ed. 173. Quote from *BOLLING et al. v. SHARPE et al.* 347 U.S. 497 74 S.Ct. 693 98 L.Ed. 884 (May 1954)

This court said this 67 years ago. Why are we still having the same conversation in 2021?

HISTORY OF THIS CASE

With that said, this brings me to the discussion about the present case that is related to all previous cases filed in this court. Same parties, same controversy. The property, my home.

After the writ of certioraris were denied in this court, I went over this controversy again. I started with jurisdiction. I discovered that the bankruptcy judge and the state court judge did not have jurisdiction to render the judgments in this long lengthy case.

In 2008, Bank of America, N. A. (BANA) foreclosed on my home with no notification. I filed a wrongful foreclosure case against BANA in the Twenty-Second Judicial Circuit Court in St. Louis, Missouri. BANA settled the case, and the foreclosure was set aside and the complaint for damages was settled.

The next year, BANA started foreclosure again. Claim preclusion should have prevented BANA from proceeding again. It did not. Foreclosure was scheduled for July 9, 2009. I filed another wrongful foreclosure case in St. Louis Circuit Court (STL Court) July 13, 2009, but before I did that, I had filed a Chapter 13 bankruptcy in the U. S. Bankruptcy Court Eastern District of Missouri July 10, 2009.

The summons were served on BANA in New York State and they had until August 31, 2009 to answer the summons. BANA did not answer by August 31, 2009. I filed for a default judgment and on September 14, 2009, the STL Court awarded me with $150,000.

On October 6, 2009, the St. Louis Clerk's office filed my writ of execution against BANA at their St. Louis branch on Market Street. The Sheriff's office served the writ on October 16, 2009.

On October 19, 2009, BANA came storming into court filing motions. A motion to shorten time for a hearing, a motion to issue a stay on the writ of execution and a motion to set-aside the default judgment. BANA told the court I was in a Chapter 7 bankruptcy, and I did not have the right to file the lawsuit(s), only the Trustee.

Right after I filed the writ of execution, I converted my chapter 13 to a chapter 7 bankruptcy. The Bankruptcy Trustee for my Chapter 13 had a motion to dismiss my chapter 13, because I had not made a payment. I could not work because I had been diagnosed with cancer and was on chemotherapy. The judge granted by motion to convert to a chapter 7 on October 8, 2009. I did not want to file chapter 7, but I did not have too many options. I needed a place to live while I went through treatments.

That day in court, October 19, 2009, BANA got everything it asked for. I could not say a word, because the judge had told me before the proceeding to sit there and not say a word. If you look at the docket for case 0922-CC08255 there are no entries where I made any comments. It was all BANA.

The default judgment was filed September 14, 2009, and BANA arrived in court on October 19th. The judge was out of time pursuant to Missouri Supreme Court Rule 75.01. The judge retains jurisdiction for 30 days. He went beyond that and much more.

The Appeals Court Eastern District recently stated in my State Court appeal (ED109198) that "Generally, a trial court loses control over its judgment thirty days after entry of judgment. See Rule 75.01. There are, however, exception to this rule. "Supreme Court Rules 74.05, 74.06, and 75.01 each provide procedural means by which to set aside judgments, each rule having its own standard for relief." *Cotleur v. Danziger*, 870 S.W. 2d 234, 236 (Mo.banc 1994) The granting of the motion to set aside the default judgment was accomplished under the authority of Rule 74.05(d), which extends the length of time for which the trial court has jurisdiction to set aside a default judgment. Rule 74.05(d) provides that the party filing the motion to set aside shall do so "within a reasonable time not to exceed one year after the entry of the default judgment." Rule 74.05(d); see Thompson v. St. John, 915 S.W. 2d 350, 357 (Mo. App. S.D. 1996) Quote taken from Snelling v. Reliance Auto., Inc, 144 S.W. 3d 915, 917 (Mo. App. E.D. 2004)

This is the same state court case Petitioner Pennington-Thurman asked the bankruptcy court to move to the adversary proceeding filed by me September 26, 2019. (Present case on appeal to this court)

The exception to the Mo. Sup. Ct. Rules does not cover the stay on the writ of execution. The stay is governed by Missouri Revised Statute 513.365. (1939) The Statute states that after the stay is issued "...but all the property, real and personal bound by such execution or order of sale, shall remain bound as if no such stay had been granted. Also, the Missouri Appeals Court overlooked 11 U.S.C § 362, the Automatic Stay. The STL Court disregarded the Automatic Stay and proceeded with the default judgment. Missouri Supreme Court Rules do not make exceptions for federal bankruptcy laws. The trial court should not have proceeded with any judicial proceedings.

BANA sent a notice to the newly assigned Chapter 7 bankruptcy trustee and told him of the hearing. He did not appear in state court. He never showed up for any of the State Court hearings. Never filed an entry of appearance.

Pursuant 11 U.S.C. 362, the STL Court was to stop all court proceedings, They did not. The default judgment was set-aside December 22, 2009, and my discharge was January 27, 2010. See11 U.S.C. § 362 (c)(1)

I prosecuted the wrongful foreclosure cases 0922-CC08255 and 0922-CC08256 against BANA as a Debtor in Possession and received a judgment on the merits. See 11 U.S.C 1303.

Instead of notifying the STL Court that all judicial proceedings were to stop and would move the default judgment to debtor's estate, the Chapter 7 Bankruptcy Trustee decided to prosecute the cases again to appease BANA.

Trustee David A. Sosne negotiated a settlement with BANA whereas BANA paid my bankruptcy estate $12,500 to have the 2009 State Court Cases dismissed with prejudice instead of keeping the default judgment of $150,000.

My creditor BANA and Trustee Sosne later filed in the STL Court a "Joint Motion to Dismiss" the 2009 State Court Cases with prejudice. During the bankruptcy hearing April 2010 to submit the proposed settlement to the bankruptcy court, I objected to the settlement agreement. I was overruled and the settlement was approved and filed May 2010. See my bankruptcy case docket 09-46628-399. See 28 U.S.C 157 (c)(1)

The question is, can the Bankruptcy Trustee disregard federal statute 11 U.S.C. § 362 (a)(1)-(7) and § 362 (c)(1)(2) and perform his own res judicata?

Is the STL Court's judgment to set aside the default judgment is void since it was issued during the automatic stay? Why didn't the Chapter 7 Trustee notify the STL Court that it was in violation of the automatic stay and keep the award of $150,000 in my bankruptcy estate for my creditors?

In 2013, BANA starts hanging notices on my front door and sending notices in the mail. I filed a motion to reopen my bankruptcy case for violation of the automatic stay and the judge denied the motion. He said BANA was enforcing its in rem rights because BANA had a lien on the property. I told the court I had a settlement agreement and BANA should not be hanging notices on my door and sending notices in the mail. Now, the settlement agreement did not mean anything.

Missouri is a non-judicial foreclosure state, but there was a judicial foreclosure proceeding in November 2008 and it ended with a settlement to set aside the wrongful foreclosure and dismiss my complaint for damages. There is also a settlement agreement filed in the U. S. Bankruptcy Court Eastern District of Missouri that is part of my estate.

BANA keeps claiming that I am barred by the doctrine of res judicata, but it appears BANA is barred by the doctrine of res judicata.

In 2016, I filed another motion to reopen my bankruptcy case. This time the same Judge, Judge Barry S. Schermer, denied my motion and really made it seem like I had really done something horrible by requesting to reopen my case for fraud upon the court. I discovered that the bankruptcy was not filed in my district. It was filed in Hannibal Missouri. Debts from a prior bankruptcy filing in 2005 was added to my 2009 schedules. I also complained about the Trustee

taking $7,444 dollars of the settlement agreement which was for $12,500. The remaining $5,000 went to my creditor the Internal Revenue Service and towards administrative fees.

In 2019, I filed an adversary proceeding to reopen my bankruptcy case pursuant to 11 U.S.C. 350 (b), 42 U.S.C.A. 1983; 11 U.S.C 105 for contempt, 11 U.S.C. 524 (a)(1)(2) and Civil Rights Act of 1964 with another motion to reopen my bankruptcy case. This time because I discovered that the bankruptcy judge did not have jurisdiction in 2010 to approve the settlement agreement. Pursuant to 28 U.S.C 157 (c)(1)(2) the judge violated this section. It reads:

(c)
(1)
A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.
(2)
Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

No final order or judgment was entered by the district judge and the judge did not have the consent of all parties to the proceeding. In the "Joint Motion To Dismiss", line 12, it reads: "The Plaintiff appeared at the hearing on the Trustee's motion and objected to the approval of the settlement." Line 13 reads "On May 17, 2010, the Bankruptcy Court entered an order approving the settlement over the Plaintiff's objections. In the settlement agreement order, it states in the first paragraph that "An objection was filed by Debtor, Wilma Pennington-Thurman."

The Judge and Respondents were aware of my objection and 28 U.S.C 157 (c)(1)(2), but proceeded on like it was all legal. There was no due process in that bankruptcy court for case No. 09-46628-399.

Also filed with the adversary proceeding September 26, 2019, was a motion to remove the state court proceeding filed against Petitioner Pennington-Thurman by Federal Home Loan Mortgage Corporation (FHLMC). Case No. 1822-CC0875-01. The bankruptcy court did not remove the case and allowed two appeals to proceed at the same time. (State appeal ED109198)

After I filed the Motion for Rehearing in the Eighth Circuit Court of Appeals, I discovered that Judge Schermer has been a friend and colleague of an Attorney that is an Attorney at the law firm that represents BANA in this case. They have known each other since 1989. Lloyd Palans is Senior Counsel at Bryan Cave Leighton Paisner LLP and is a well-known bankruptcy practitioner. See Petitioner's "Supplement to Motion for Rehearing" Exhibit A.

REASONS FOR GRANTING THE WRIT

When appeal is taken from a void judgment, the appellate court must declare the judgment void. Because the appellate court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A void judgment may be attacked at any time by a person whose rights are affected. Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), *Klugh v. U.S., 620 F.Supp.* 892 (D.S.C. 1985). *Margoles v. Johns,* 660 F.2d 291 (7th Cir. 1981) *cert. denied,* 455 U.S. 909, 102 S. Ct. 1256, 71

L. Ed. 2d 447 (1982); *In re Four Seasons Securities Laws Litigation,* 502 F.2d 834 (10th Cir.1974), *cert. denied,* 419 U.S. 1034, 95 S. Ct. 516, 42 L. Ed. 2d 309 (1975).

The bankruptcy judge, Judge Barry S. Schermer said in his "Order Denying Motion To Reopen Bankruptcy Case" October 23, 2019 that:

"I will not reopen this bankruptcy case where the Debtor has engaged in tireless and duplicative litigation in state and federal courts, causing parties and courts to expend significant resources. The time has come to stop this frivolous and vexatious litigation."

Judge Schermer failed to recuse himself from this case when he knew he was close friends and colleague with an Attorney that works for the law firm that represents Respondent Bank of America, N. A. in this case. Bank of America is represented by Bryan Cave Leighton Paisner LLP. Judge Schermer's judicial remarks during the course of this case reveal an opinion that derives from an extrajudicial source. His opinions over these past twelve years, reveal a high degree of favoritism as to make fair judgment impossible. See *Liteky v. United States* 510 U.S. 540 at 555 (1994); also see Petitioner's supplement to motion for rehearing filed March 15, 2021; 28 U.S.C. § 455(a)(1)(2)

Here is a quote from Liteky v. United States:

"Subsection (a), the provision at issue here, was an entirely new "catchall" recusal provision, covering both "interest or relationship" and "bias or prejudice" grounds, see *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847 (1988) but requiring them all to be evaluated on an objectitve basis, so that what matters is not the reality of bias or prejudice but its appearance. Quite simply and quite universally, recusal was required whenever "impartiality might reasonably be questioned." *Liteky v. United States,* 510 U.S. 540 (1994)

Judge Schermer called my pursuit for the truth and justice "frivolous and vexatious litigation"

Now, when I discovered this, while working on this appeal, I presented this profound information to the Eighth Circuit Court of Appeals. If the Appellate court had read the supplement the outcome may have been different. Instead, the 8th Circuit Court issued an order stating, "The petition for rehearing by the panel is denied." March 30, 2021.

On February 10, 2021, the 8th Cir. Court filed a judgment that read "This appeal from the Bankruptcy Appellate Panel was submitted on the record and briefs of the parties. After consideration, it is hereby ordered and adjudged that the judgment of the Bankruptcy Appellate Panel in this cause is affirmed in accordance with the opinion of this Court."

This case was not submitted to the Bankruptcy Appellate Panel. It appears the Clerk of the court is issuing judgments. The order issue Per Curiam ends with "The judgment is affirmed. See 8th Cir. R. 47B. The 8th Circuit Court has given me the same "8th Cir. R 47B for the past 7 years.

This court stated in Caperton v. A. T. Massey Coal Co.:

"The Due Process Clause incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case, *Tumey* v. *Ohio*, 273 U. S. 510, 523, but this Court has also identified additional instances which, as an objective matter, require recusal where "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable," *Withrow* v. *Larkin*, 421 U. S. 35, 47. Caperton v. A.T. Massey Coal Co. 556 U.S. 868 (2009)

There has not been any form of due process of the law in this case for twelve years just because of this. Judge Schermer has great influence in the Eighth Circuit. He is on the Bankruptcy Appellate Panel. The same panel that presided over my first appeal in 2013. He has been relentless in keeping me from reopening my bankruptcy case. Now, I see why.

"Relief is not discretionary matter, but is mandatory, *Orner. V. Shalala*, 30 F.3d 1307 (Cob. 1994). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process." Fed. Rules Civ. Proc., Rule 60(b)(4); *Klugh v. U.S., 620* F.Supp. 892 (D.S.C. 1985).

In 2016, when I filed my second motion to reopen my bankruptcy case. I filed it pursuant to a motion for relief from judgment under Fed. R.Civ. P. 60(d)(3) based on allegations of fraud, following a settlement in the bankruptcy court that was non-core and unlawful distribution of the settlement funds and bankruptcy procedures. Judge Schermer denied that motion and admitted he approved the settlement agreement. Not the district court, he did. This is a settlement agreement that is void and has no validity, but Respondents want to use the judgment to establish a right to past and present judicial proceedings in state and federal court.

"If the releasing party fails to include provisions protecting the non-dischargeable character of the debt, the obligation may be transformed into a mere contractual obligation dischargeable in bankruptcy. This would be true particularly if the settlement involves the entry of a judgment converting an unliquidated claim into a fixed debt obligation, without a clarification that the claim is subject to non-dischargeability." See In re *Cybersight LLC,* No. 04-112, 2004 U.S. Dist. LEXIS 24426 (D. Del. Nov. 18, 2004)

In *Cybersight,* the district court found that there was "no material difference between the exchange of a promissory note for equity interest" and the judgment that the claimant received. Id. "In both instances, the claimants, pre-petition, were no longer able to participate in the benefits and risks associated with being equity holders of the debtors ." Id.

The settlement agreement does not have the power they intended it to have.

As used in the Constitution, liberty means freedom from arbitrary and unreasonable restraint upon an individual. 14th Amendment. This settlement agreement from 2010 is not enforceable. Even if were to stand at its present state it has no power to enforce a foreclosure as Respondents used it for that purpose in 2014 in State Court Case 1422-CC09976.

Petitioner Wilma Pennington-Thurman is before this court for the want of due process of the law and justice.

The Supreme Court wrote: We conclude that Justice Embry's participation in this case violated appellant's due process rights . . . . We make clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama "would offer a possible temptation to the average . . . judge to. .. lead him not to hold the balance nice, clear and true." The Due Process Clause "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between the contending parties. But to perform its high function in the best way, 'justice must satisfy the appearance of justice. *'Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825 (1986) (first elision added) (internal citations omitted). "The Constitution requires recusal where 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Hurles v. Ryan,* 752 F.3d 768,788 (9th Cir. 2014) (quoting Withrow, 421 U.S. at 47).

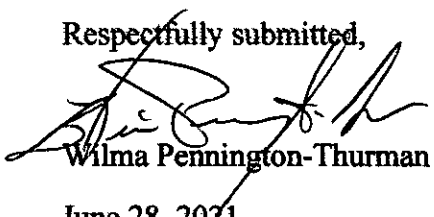
The United States Supreme Court is authorized only to hear cases that involve a federal or Constitutional issue. This case involves 42 U.S.C. § 1983. Civil action for deprivation of rights. With these types of actions by a federal judge makes the public lose confidence in the judicial process. The St. Louis area has been subjected to arbitrary rulings too many times and this is just one of many.

The appellate court did not look at my briefs. If Judges Colloton, Melloy and Grasz had looked at Appellant's brief there would be an understanding that this case involves a constitutional question. The Eighth Circuit Court of Appeals decision is erroneous.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Wilma Pennington-Thurman

June 28, 2021