22-1058

No.

IN THE

Supreme Court of the United States

JOHN L. ROSEMAN, Sr.

Petitioner

v.

WELLS FARGO BANK N.A. ("Wells Fargo")

Respondent

On Petition for Writ of Certiorari

To The United States Court of Appeals for The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

John L. Roseman, Sr.
In pro se
24823 Cobblestone Court
Farmington Hills, MI 48336
313-815-0119

QUESTIONS PRESENTED

Whether motion-initiated *"sua sponte"* dismissal of courts below in this case was proper, and in keeping with the fairness standards required by this Supreme Court for *pro se* pleadings; in essence as said standards are articulated by this Court generally, in *Haines v. Kerner*, 404 U.S. 520-521 (1971) *et.al.*

Whether rulings of courts below constitute an infringement of Petitioner's rights under Due Process Clauses of Constitution and related rights under 42 U.S.C § 1981(a)(1991); 42 U.S.C. § 1982 (1978); Title VII of the Civil Rights Act of 1964; and

Whether Mortgage/Loan in this case should be invalidated.

LIST OF PARTIES AND RELATED CASES

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

RELATED CASES

- *John L. Roseman v. Patricia A. Adams,* State of Michigan in the Circuit Court for the County of Oakland, Case No. 2017-156962-CH. Judgment entered **March 13, 2018**. (App. W).
- *John L. Roseman v. Patricia A. Adams and Patrick Burgess, husband and wife*, State of Michigan 47th Judicial District Court, Case No. GC18H0529X. Judgment entered April 9, 2018. (App. S)
- *John L. Roseman v. Gwen Weiger,, et al.,* State of Michigan in the Circuit Court for the County of

Oakland, Case No. 2018-164581-CH. Judgment entered **July 17, 2018**. (App. R).

- *John L. Roseman v. Gwen Weiger,, et al.,*. State of Michigan Court of Appeals Case No 34467. Judgment entered **June 27, 2019**. (App. K)
- *John L. Roseman v. Gwen Weiger,, et al.,* Michigan Supreme Court, Case No MSC 159903. Review Denied. **September 30, 2019**. (App. X)
- *John L. Roseman v. Patricia A. Adams and Patrick Burgess,* American Arbitration Association, Case No 01-19-0003-1869. Judgment entered **May 4, 2020**. (App. Z)
- *John L. Roseman v. Patricia A. Adams et al.*, **Motion** *to Vacate Arbitration Award,* Civil Action No. 20-CV-12072 **,** United States District Court Eastern District of Michigan Southern Division, **Judgment entered August 4, 2020.** (App. I)

- *John L. Roseman v. Gwen Weiger,, et al., Motion to Vacate Arbitration Award State* of Michigan in the Circuit Court for the County of Oakland, Case No. 2018-164581-CH. Judgment is *pending*.

OPINIONS BELOW

[X] For cases from federal courts:

The January 25, 2023 opinion of the three-judge U.S. Court of Appeals for the Sixth Circuit is not published. The text of the decision is set out in the Appendix to the petition, *infra* at App. C.

The opinion of the U. S. district court appears at Appendix to the petition, *infra* App. D.

The opinions of the highest court to review the merits appear at Appendix C to the petition and are unpublished.

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JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on **January 25, 2023**. *See* **App. C**.

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment provides in relevant part:

> The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated

The Fifth Amendment to the U.S. Constitution provides in relevant part:

> No person . . . shall be . . . deprived of life, liberty, or property, without due process of law.

The Seventh Amendment to the U.S. Constitution provides in relevant part:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ..."

Section 1 of the Fourteenth Amendment provides:

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.

U.S. Code § 706 (1) provides in relevant part:

"[C]ompel agency action unlawfully withheld or unreasonably delayed and hold unlawful and set aside agency action findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, not in accordance with law; contrary to constitutional right, power, or immunity ..."

U.S. Code §556 (d) which provides in relevant part:

("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof ... [a] party is entitled to present his case or defense by oral or documentary evidence ... as may be required for a full and true disclosure of the facts. [i]n rule making or determining claims for money ... an agency may when a party will not be prejudiced thereby adopt procedures for the submission of all or part of the evidence in written form.") *See also* U.S. Code §557 (a).

STATEMENT OF THE CASE

Petitioner, a black/African-American, of protected status within the meaning of Title VII of the Civil Rights Act of 1964, a married man, with five dependent Children, was subjected to non-judicial foreclosure proceedings on his residential Property (24823 Cobblestone Court, Farmington Hills, Michigan 48336: hereinafter "Property") at a time and during a period in which a lawsuit filed on August 7, 2020 in Oakland County Michigan circuit court having bearings and implications on said Property is pending for want of a hearing on Petitioner's application for, *inter alia,* vacatur of arbitration award. (App. Z). On January 20, 2022, in federal district court, Petitioner challenged Respondent's non-judicial foreclosure proceedings in federal district court on numerous grounds also suing Respondent for varied torts, civil conspiracy, irregularities, and for violation of statutory and constitutional provisions. District court dismissed case

sua sponte after Respondent proposed it do so. (Apps. C and D).

Petitioner purchased Property on or about July 12, 2016, obtaining from Patricia A. Adams and Patrick C. Burgess ("Sellers") title to the Property via Warranty Deed. In this real estate transaction, both Sellers and Petitioner were represented by a common vendor, real estate agents of real estate agency, Keller Williams West Bloomfield Market Center *et al.*("Realtors").

This instant matter, whereof, *inter alia*, Petitioner, in *pro se*, challenged foreclosure proceedings is directly related to and arises from a residential real estate purchase transaction which also gave rise to legal controversies disputed in Michigan courts and before American Arbitration Association ("AAA").

Concerning related controversies litigated in state court and before arbitration panel: firstly, Michigan court, in a case evaluation, found fault attributable to Patricia A. Adams, seller of subject property but ultimately dismissed the case for lack of subject matter jurisdiction. *See gen.* Apps. T and W; respectively, Case Evaluation and Summary Disposition.

Subsequently, additional actions relating to Property transaction are pursued by Petitioner. Pertinently, Michigan trial court and Michigan appeals court then dismisses operative lawsuit case citing as its basis for dismissal, the alleged "release" terms in the contract of sale and compels arbitration for certain parties of lawsuit pursuant to alleged arbitration clause of contract of sale. *See gen.* Apps. R and K; respectively, Michigan trial court order dismissing case and Michigan appeals court order affirming. Petitioner contends "Release" (*Id.*) was not fairly and knowingly made and further disputes the validity of "Release" and forced "Arbitration" clauses on the basis of fraud, misrepresentation, and violation of statutory. *See generally,* Petitioner's pleadings (Appellant's Brief on Appeal and Appellant's Reply Brief: 6th Cir. U.S Case No. 22-1448). Petitioner also contends that the facts and circumstances of the matters in contention adequately infer that, in the Property purchase transaction he was subjected to fraud, unfair trade practices, and unconscionable dealings because Petitioner is an

African-American man—that Petitioner's race is the most likely and reasonable explanation for the particularly outrageous and contemptuous mistreatment complained of (*Id.*). Moreover, that state court proceedings also exemplify bias and contempt likely attributable to Petitioner's race. *See gen.* (*Id.*). "In May 2020 the arbitrators issued an interim award, and in June 2020 they issued a final award, both fully adverse to" Petitioner— arbitrators finding no fault attributable to, Sellers (*Id.*), a finding which clearly contradicts that of Michigan court's case evaluation. (U.S. district Ct; Case No. 20-CV-12072, *Opinion and Order Den. Pl.'s Mot. To Vacate Arbitration Award*: App. I.) *Also, See gen.* Apps. Z and T; respectively, American Arbitration Association ("AAA") awards and Michigan court case evaluation.

Petitioner initially challenged AAA's arbitration award in district court, contending, *inter alia*, that AAA

overstepped its authority. *See gen. First, in Bankers Life & Cas. Ins. Co. v CBRE, INC.* F3d, 2016 WL 4056400 (7th Cir. July 29, 2016). Then, on or about August 8, 2020, as compelled by district court, Petitioner applied "to Oakland County Circuit Court, as that is the court that ordered the parties in this matter to arbitrate. *See Rozanski v. Findling*, No. 330962, 2017 WL 1011530, at *6 (Mich. Ct. App. Mar. 14, 2017) (noting that Michigan law requires a party seeking to vacate an arbitration award to apply to the circuit court that ordered the arbitration to take place)." (App. I)

Further, and to the extent that situational context is relevant; serving his fourth term in office in 2018, and apparently conveying a penchant for white supremacy, Oakland County Executive L. Brooks Patterson invoked the Ku Klux Klan in public discourse declaring that he'd "rather join the Klan" than join a group of Detroit CEO's in creating a regional business

for the city. Burton, Cindy & Gallagher, John. *"Brooks Patterson Apologizes For Saying He'd Rather 'Join The Klan'"*. Detroit Free Press, Published August 9, 2018. According to Pew Research, Detroit, Michigan is the 2nd blackest city in the U. S. with a population of about 500,000 blacks—2nd to Jackson Mississippi with a population of about 135,000 blacks. Pew Research https://pewresearch.org>social-trends>fact-sheet Sourced April 6, 2023.

Sixth Circuit Court of Appeals decline to review state court decisions reasoning "... to the extent that Roseman seeks review of judicial rulings that were issued in his prior lawsuits against the sellers and the real estate agency, those issues are not properly before us in this separate lawsuit." (App. C).

Related State Actions and Arbitration

In brevity, the following summarizes the state actions directly related to instant matter.

John Roseman v. Patricia A. Adams; Oakland County Circuit Court, Case No. 17-156962-CH.

- In this action, both plaintiff, John L. Roseman and defendant Seller Patricia A. Adams proceed in *pro se/pro per* —neither party is represented by an attorney.
- Among other things, plaintiff's complaint alleges fraud, misrepresentation, and violation of the Seller's Disclosure Act (MCL 564.951-66).
- Case evaluation panel found Sellers would likely loose lawsuit on the merits of Petitioner's claims and recommended Petitioner receive monetary damages.
- Court dismissed the lawsuit because of jurisdictional limits. (App. W).

John L. Roseman v. Patricia A. Adams and Patrick Burgess, husband and wife; State of Michigan 47th Judicial District Court, Case No. GC18H0529X. (App. S).

- Essentially a lawsuit Petitioner filed, in *pro se*, against the Sellers but dismissed voluntarily.

John L. Roseman v Gwen Weiger, et al.; Oakland Count Court, Case No 18-164581-CH

- A lawsuit filed by Petitioner, in *pro se*, against the Sellers and real estate companies involved with the sale of the property namely: Keller Williams West Bloomfield Market Center/Curtist-Botsford Real Estate, LLC; Keller Williams Realty Inc.; and real estate agent Gwen Weiger.
- Petitioner complaint in this suit consisted of, *inter alia,* allegations of fraud, misrepresentation in the sale of the Property, violation of The Land Division Act — a civil

conspiracy being in the factum.

- On December 24, 2018, Respondent receives Petitioner's second amended complaint which was sent by Petitioner via registered mail.
- Sellers in this case are represented by counsel —the same attorneys representing real estate companies in this action.
- In this case Petitioner sought, via subpoena, evidence and documentation to, among other things, establish racially discriminative motive for wrongdoing alleged.
- Notably, in this case default judgment against Keller Williams Realty is entered by court but subsequently set aside. *See gen.* Apps. N and P.
- Court summarily dismisses Petitioner's claims

and orders arbitration. (*See* App. R).

- After arbitration took place before AAA and Final Award of Arbitrators was issued on June 17, 2020, Petitioner, on August 7, 2020 filed application with court to vacate arbitration award.

John L. Roseman v. Gwen Weiger,, et al.,. State of Michigan Court of Appeals Case No. 34467, per trial court case No. 2018-164581 (App. K).

- Petitioner challenged trial courts dismissal of his claims and trial court's setting aside of default entered against Keller Williams Realty Inc.

John L. Roseman v. Gwen Weiger,, et al., Michigan Supreme Court, Case No MSC 159903. Review Denied. **September 30, 2019**. (App. X).

- Petitioner sought review of Michigan court of appeals order, case No. 34467.
- Petitioner raised two new issues: (1) Petitioner sought recission of contract of sale on the basis

Sellers *et al.* did not, as required by law, inform him of Home Owners Association and required association dues; and (2) race-based discrimination based.

- On August 6, 2019 Petitioner sought in motion to Michigan supreme court, a restraining order and/or preliminary injunctive relief against Respondent.

John L. Roseman v. Patricia A. Adams and Patrick Burgess, American Arbitration Association, Case No 01-19-0003-1869. Judgment entered **May 4, 2020**. (App. Z)

REASONS FOR GRANTING THE WRIT

Petitioner fully incorporate the foregoing paragraphs as fully stated herein.

Sixth Circuit Appeals court *et al.* upholds, by way of precedent, rationality and legal merit of concerns that

citizens have about the physical and mental acuity of judges who are past the age of 70; but the average age of three-judge Sixth Circuit Court panel deciding Petitioner's case was, contemporaneously, approximately 79.6 years of age. The shortcomings of the panel's work could cognizably be attributable to old age. Accordingly, Petitioner claims that he is prejudiced by this fact and demands equal protection under the law in that, others, similarly situated are protected from undue risk and potential perils of geriatric adjudication. *See gen. Theile v Michigan*, 891 F.3d 240, (6th Cir. 2018).

Petitioner and others observe that courts condone discrimination in the marketplace; one such researcher expressing that "[p]erhaps the most interesting conclusion of [its] study was that the behavior of car

dealers was consistent with the theory that part of the reason that they offered the higher prices was that they 'disproportionately [valued] profits extracted black males.' That is, car dealers acted, in part, because they derived joy out of sticking Black consumers with a bad deal. . . .Blacks are given the proverbial 'bum deal' when they shop." Matt Graves, *Purchasing While Black: How Courts Condone Discrimination in the Marketplace*, 7 Mich. J. Race & L. 159 (2001). Available at: https://repository.law.umich.edu/mjrl/vol7/iss1/5

A short distance from where Petitioner purchased Property which is the subject of this action, Dr. Ossian Sweet, a black physician, along with his family, having "*had a difficult time finding a realtor*" was however, on June 7, 1925 able to eventually purchased a house "*they were less than impressed with*" for "*US$18,500 ... about $6,000 more than the house's fair market value.*" This

incident involving Dr. Sweets, like the instant case provides a lucid optic for the "*proverbial 'bum deal'*" *Ossian Sweet, Housing discrimination,* wikipedia.org/wiki/Ossian_Sweet Wikipedia, Sourced April 5, 2023. Here (*Id.*) whereas Dr. Sweets financial wherewithal offset discriminatory goals of restrictive covenants, discriminatory animus achieves harm, *via,* among other things, a "bum deal". In the aggregate, *bum deal* artifice, conceivably thwart black American's upward mobility, installing and maintaining wealth disparities, that, unmitigated, have the effect of making black people perpetual pawns of commerce—a permanent underclass.

This Supreme Court's failure to grant writ and exercise its supervisory powers in this case would likely contribute to and extend a persistent social order that holds that black persons are perpetual pawns of

commerce—marks for fraud—and, that a refusal of black persons to acquiescence to mistreatment will not garner meaningful or substantial redress in courts of law, even when clearly warranted. As such:

> "Courts must do better for those people of color who are brave enough and committed enough to stand up to the discrimination that most people of color just grin and bear. I'm not arguing that the courts should offer special treatment to §§ 1981 and 1982 plaintiffs, I only ask that §§ 1981 and 1982 plaintiffs be given the same opportunity to litigate their claims that virtually all other plaintiffs are given. If the playing field is simply leveled, I have every confidence that the plight of people of color, and in particular Blacks, in the marketplace will finally be documented—and hopefully remedied" (GRAVES, *Purchasing While Black* (2001), Pg. 194).

Petitioner and his family have rights under the Fourth Amendment to be secure in their house against

unreasonable search and seizures. The non-judicial foreclosure proceedings of Respondent in this case should, based on reasons set forth herein, be found by this Supreme Court to constitute infringement upon said rights (*Id.*). Petitioner thus compels this Honorable Court to, in accordance with its oath, timely move to protect and defend the Constitution of the United States (18 U.S. Code §2381).

Arbitration, a dispute apparatus Petitioner understands was originally intended to streamline disputes of business parties, large commercial concerns—a class of litigants one may reasonably assumed to be generally well-resourced, adequately sophisticated, and having reasonable access to the wherewithal to aptly navigate this dispute resolving platform. Arbitration has more contemporaneously however, become an artifice of bad faith, unfairness and

fraud—hence The Forced Arbitration Injustice Repeal Act of 2022, bill numbers H.R. 1374 and S. 505. In this case, AAA arbitrators in ran roughshod over Petitioner claims, overstepping its authority and issuing awards that were fully-adverse to Petitioner: noting here that arbitrators' awards favored Sellers, who were previously found at fault by Michigan court case evaluation protocol (App. T)—and, likely more important to arbitrators, awards shielded from liability, real estate professionals Keller Williams Realty Inc. *et al.* who were in the sphere of liability. The outcomes of arbitration in this case clearly deviates from fairness and principle given, *inter alia*, the findings of state court's case evaluation panel. (*Id.*). This Court should find that, pursuant to Section 1 of the Fourteenth Amendment, forced arbitration in this case is an unconstitutional abridgment in that, apparently neither the Sellers, nor Petitioner knew about the arbitration terms of purchase

agreement, neither invoking an arbitration clause in the first of the related state actions wherein they both litigated dispute without counsel. Obviously, said arbitration terms were not fairly made known—the Sellers rather raising an "As Is" defense of Petitioner's claims. *See gen.* pleadings of plaintiff and defendant in *John L. Roseman v. Patricia A. Adams,* State of Michigan in the Circuit Court for the County of Oakland, Case No. 2017-156962-CH.

Due Process

A state may be a party in this case and this This Supreme Court should GRANT writ of certiorari because this court has held that "the supreme court shall have original jurisdiction in all cases affecting ambassadors, other public minsters, and consuls, and those in which a state shall be a party". *Marbury v. Madison* – 5 U.S. (1 Cranch) 137 (1803). It may be

reasonably inferred from facts in this case that response to Petitioner's application for vacatur of arbitration award, Michigan Oakland County circuit court infringes upon entitlements due Petitioner under Constitution's Due Process Clauses. Consequently, Michigan court's corresponding jurisdiction has ceased (5 U.S. Code §556(D), §557, §706). Proper determination on this petition for writ of certiorari holds "[t]hat a constitution should receive liberal interpretation in favor of citizens especially with respect for those provisions designed to safeguard the liberty and security of the citizen in regard to both person and property" 16 Am. Jur. Constitutional Law §97 (1971).

To establish a procedural due process claim pursuant to § 1983, plaintiffs must establish three elements: (1) that they have a life, liberty, or property interest protected by the Due Process Clause of the Fourteenth Amendment to the United States

Constitution, (2) that they were deprived of this protected interest within the meaning of the Due Process Clause, and (3) that the state did not afford them adequate procedural rights prior to depriving them of their protected interest. *See, e.g., Zinermon v. Burch*, 494 U.S. 113, 125-26 (1990).

Petitioner and public are manifestly prejudiced by Respondent's violation of § 261 of the Land Division Act, MCL 560.101 *et seq.* Respondent's foreclosure proceedings coop the misdeeds of Sellers *et al.* Petitioner has paid to maintain and repair private road, and has paid for expenses of directly related litigating related disputes: Petitioner would therefore "have been in a better position to preserve the property interest absent the fraud or irregularity." See *Kim,* 493 Mich. at 115–116, 825 N.W.2d 329. Accordingly, defendant Wells Fargo violated MCL 600.3204 (1)(c) which requires "[t]he mortgage containing the power of sale has been properly recorded."

The clear intention of § 261 of the Land Division Act, MCL 560.101 *et seq* is to prevent the specific the

injury Petitioner has been subjected to in this case. Mortgage contract in this case is unenforceable because "[P]ublic policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy." *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, at ¶ 64, quoting 17 Ohio Jurisprudence 3d (1980) 528, Contracts, Section 94. Mortgage contract in this case should be disregarded in that it "clearly contravenes an established public interest." (Citations omitted.) *Core Funding Group, L.L.C. v. McDonald*, 6th Dist. No. L-05-1291, 2006-Ohio-1625, 2006 WL 832833, at ¶ 59.

Petitioner "'act[ed] promptly after [he became]

aware of the facts' on which [he] based [his] complaint" *Diem v. Sallie Mae Home Loans, Inc.*, 859 N.W.2d 238, 242-43 (Mich. Ct. App. 2014).

Michigan court has wrongfully refused to process Petitioner's grievance insomuch that Oakland County Sixth Circuit court, in case No. 2018-164581, accepted and filed Petitioner's motion to vacate arbitration award on August 7, 2020 ("Aug. 7, 2020 motion") and as of the time of this writing, there has been no hearing said application for vacatur of arbitration award (*Id.*) See court docket or its Register of Actions (*Id.*). Here Petitioner believes court intentionally treated him differently because of his race. "Frequently, the most probative evidence of intent will be objective evidence of what actually happened rather than evidence describing the subjective state of mind of the actor. For normally the actor is presumed to have intended the natural consequences of his deeds. *Washington v Davis*, 426 U.S. at 253 (Stevens, J., concurring) (1976). ... Courts have determined the *prima facie* case in 1981 and 1982 to be

the same: A plaintiff 'must allege that he has been deprived of a right which under similar circumstances, would have been accorded to a person of a different race.' To make this showing, a plaintiff must show 'actual and intentional racial discrimination." Graves, *Purchasing While Black* (2001) Pg. 165.

Also, with regards to Aug. 7, 2020 motion, a logical conclusion is therefore that adequacy of state remedies for redressing the wrong are wanting. The 6th Circuit appeals court having "stated that for the purposes of such claims brought under § 1983, 'the plaintiff must plead and prove that state remedies for redressing the wrong are inadequate.' *Victory v. Walton*, 721 F.2d 1062, 1066 (6th Cir. 1983). ..." *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999). Further, in regards to Aug. 7, 2020 motion, Petitioner has been denied right under 42 U.S Code § 1981(a) (1991) which in relevant part provides he the right to "sue ... and to the full and equal benefit of all laws and proceedings for the security of ...property as enjoyed by white citizens".

Moreover, "[t]he state had an adequate remedy in

form, both procedurally and in damages, but the state did not apply it ... *Haag v. Cuyahoga County*, 619 F. Supp. 262, 278-79 (N.D. Ohio 1985), *aff'd* 798 F.2d 1414 (6th Cir. 1986)." *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999).

The implications of Graves' study suggest that instant case may be a rare opportunity for this Court in that, "[t]he expressive message of the laws has been heard, and the victims of discrimination in the marketplace do not turn towards the litigation process to seek justice. A near majority of Blacks feel that even complaining informally about disrespectful treatment in the marketplace is a waste of time. ... the number of informal civil rights grievances that result in full-blown litigation are disproportionately low." (Graves, *Purchasing While Black*, (2001) Pg. 186).

"Private litigation against one culpable individual or institution can cause other rights violators to reassess the propriety and legality of their actions." (*Id* @ Pg. 187)

To the extent aspects of Petitioner's pleadings did not receive consideration in district court because

"[a] district court engages in impermissible appellate review when it hears claims that are 'inextricably intertwined' with the state court decision" this Supreme Court should exercise its supervisory powers to review decision of arbitrators and the related decisions of state courts. *Feldman,* 460 U.S. at 483-84 n. 16; *Wright,* 39 F.3d at 157." *Levin v. Attorney Registration & Disciplinary Commission*, 74 F.3d 763, 766 (7th Cir. 1996). And as such, pursuant to U.S. Code § 706 (1): "[C]ompel agency action unlawfully withheld or unreasonably delayed and hold unlawful and set aside agency action findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, not in accordance with law; contrary to constitutional right, power, or immunity ..."

Breach of Duty

In courts below Petitioner argued that Respondent breached duty owed by reason of security instrument the Mortgage with regards to defective appraisal contending that, appraisal reports are relied upon by lenders like Fannie Mae, for example to inform as to existence of private/community roads as such facts

have a bearing on (1) whether it will deliver the loan; (2) the marketability of a property; and (3) to stipulate terms of securitization and/or purchase. *See Fannie Mae Selling Guide* https://selling-guide.fanniemae.com sourced Feb. 2022. Petitioner paid lender AMC an amount of $484.00 to conduct such an appraisal on his behalf, but lender was negligent in its duty to Petitioner, failing to discover private/community road abutting Property causing Petitioner to unwittingly acquire debt and expense of repairing said private road whereof Petitioner has suffered losses.

Mortgage contract in this case should be found unenforceable because "[P]ublic policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy." *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, 809 N.E.2d 1161, at ¶ 64, quoting 17 Ohio Jurisprudence 3d (1980) 528, Contracts, Section 94. Mortgage contract

in this case should be disregarded in that it "clearly contravenes an established public interest." (Citations omitted.) *Core Funding Group, L.L.C. v. McDonald*, 6th Dist. No. L-05-1291, 2006-Ohio-1625, 2006 WL 832833, at ¶ 59.

Further, because "the mortgage follows the note" (*Carpenter v. Longan* 83 U.S. 271 (1872)) Petitioner contended in courts below that Respondent is, by this precept (*Id.*), liable. Here, this Supreme Court should find palpable error in that Petitioner put forth plausible claims entitling him to relief and that *sua sponte* dismissal was improper, and unfair. (*See exhibit* Federal Truth-in-Lending Disclosure—Itemization of Amount Financed; Re. ECF No. 12-1, PageID.274 @ line 804 Appraisal Fee).

Moreover, due to actions taken by Respondent to acquire interest in the Property and/or debt instrument(s) securitizing Property, after: (1) it was in aware of Petitioners claims of fraud and irregularities relating to private/community road; and (2) disputed Loan was in default—Respondent lacked standing to

foreclose non-judicially. *See gen. Glazer v. Chase Home Finance LLC*, 704 F.3d 453, 462 (6th Cir. 2013).

Consistent with the foregoing, Petitioner contends, Respondent is liable under "rubber stamp" and/or "cat's paw" theory of liability. *See Arendale v. City of Memphis*, 519 F3d 587 (6th Cir. 2008); *Staub v. Proctor Hosp*, 562 US 411 (2011).

According to Respondent, "MERS assigned the Mortgage from the originating lender to Wells Fargo Bank, N. A., and the assignment was recorded on April 18, 2019 Liber: 52747 Page: 175, Oakland County." (R. ECF No. 11, PageID. 203). Here, Respondent intentionally omits date MERS assigned the Mortgage (*Id.*) to make an unfair presentation of the facts and obfuscate the fact that Respondent obtained interest in the Note and/or Mortgage in August of 2016. Respondent obtained interest in the Loan at some point after July 2016 Property purchase transaction and prior to "Periodic Payment" was due on "Loan" in August 30,

2016 whereas on this date Petitioner paid Respondent $2,639.97.

Appeals court, noting that Respondent did not effectuate *recording* of transfer until April 18, 2019, rationalizes its affirmation of district court's Rule 12(b)(6) *sua sponte* dismissal on the logic ". . . that Roseman had entered the mortgage contract in 2016 and that defendant Wells Fargo was not assigned the mortgage until 2019, the district court reasoned that Roseman had failed to explain how Wells Fargo was involved with the alleged misrepresentations made by the sellers and real estate agency that sold him the home." (App. C). Clearly, appeals court is misguided in that it erroneously construed facts pertaining to 2019 transfer (*Id.*) as being exculpatory for Respondents because of appeals court's erroneously perceived temporal disconnection.

In the evidentiary record of this case is Petitioner's application with Michigan supreme court for temporary restraining order or preliminary injunction against Respondent; courts below were thereby informed as to Respondents interest in loan existing prior to transfer *recorded* on April 18, 2019. (*See* Appellant's Opening Br. U.S. 6th Cir. COA Case No. 22-1448 @ Pg. 16). Respondent began servicing the Loan and accepting timely payments from Petitioner on the Mortgage in August of 2016, supporting a finding by this Court that there Respondent sufficiently proximate to wrongdoing complained of to infer casual connection to nexus of alleged fraud, misrepresentation and irregularities particularly to the degree that Rule 12(b)(6) was therefore, improper in this case.

If, on the other hand, *arguendo*, Respondent first obtained interest in the Note, Mortgage or Loan on April 18, 2019, then as the 6th Cir. COA has previously held,

Respondent is a "debt collector", obtaining interest in a loan after it has gone into default and therefore precluded from taking the non-judicial foreclosure actions it did in this case. *See gen. Glazer v. Chase Home Finance LLC*, 704 F.3d 453, 462 (6th Cir. 2013). Due to averments of Respondent and Plaintiff, courts below were informed as to Loan not being current and in sustained default since about February 1, 2019. Respondent has otherwise not proffered facts establishing actual interest in Mortgage prior to April 18, 2019 transfer *recording*. Respondent took nonjudicial actions to effect dispossession of Property with foreclosure sales scheduled to take place on February 1, 2022. (*See* R. ECF No. 11 PageID. 199).

In the abstract, Respondent's 2016 relationship with Mortgage/Loan could, speculatively—as seen in *Glazer* (*Id.*) — have at some point prior to 2019 amounted to it

obtaining servicing rights that "did not transfer any ownership rights in the note and mortgage". (*Glazer*, 453, 456).

Nonetheless, assuming, *arguendo*, as did appeals court, that Respondent obtained interest in the Mortgage, Loan or Note on April 18, 2019 dictates pursuant to logic of *Glazer*, that the protective scope of the Fair Debt Collections Practices Act provides mortgagers protection which essentially preclude "debt collector" Respondent from "[t]aking or threatening to take any nonjudicial action to effect dispossession or disablement of property". (*Glazer* @ 453, 462). This Supreme Court should therefore concede that contrary to appeals court ruling, Petitioner did not fail "to allege sufficient facts showing either that there was 'fraud or irregularity in the foreclosure procedure. . . ." and that Petitioner's complaint and proposed amended complaint contained sufficient factual matter to state a claim that

is plausible on its face. *Ashcroft v. Iqubal*, 556 U. S. 662, 678, (2009). (App. C).

Petitioner disagrees with conclusion of courts below on the sufficiency of his allegations of discrimination (*see*: App. Pg 56-57) because—the Supreme Court has decided "[t]he decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim" and a "short and plain statement of the claim" is adequate. (*Conley v. Gibson,* 355 U.S. 41,47 (1957); and Fed. R. Civ. P. Rule 8.) Moreover, as demonstrated herein, the *premise* of mistreatment of black people attributable to race-based modalities *is* not irrational in the context of commercial transactions including housing, and therefore race-based discriminatory animus rather plausibly explains why sophisticated and resourceful professionals receiving market rates for their services rendered inferior, defective, perfunctory, negligent, and unlawfully executed products which Petitioner

consumed to his demise. Mortgage and more broadly speaking, agency derived Property purchase transaction are non-conforming goods. *See* Michigan laws (P. A. 1967 No. 2887 per M.C.L.A. 560.261.; Mich. Comp. Law Ann. §§ 600.3201-3285).

Granting Writ May Encourage Pre-Trial Settlement in Pro Se Civil Litigations

In contemporary legal disputes a controversy is likely to be resolved by settlement or motion during the pre-trial stages.

> "[F]ederal courts actually tried fewer cases in 2002 than they did in 1962, despite a fivefold increase in the number of civil filings . . . over the same time frame. In 1962, 11.5% of federal civil cases were disposed of by trial. By 2002, that figure had plummeted to 1.8%." Patricia Lee Fefo, Chair Section of Litigation for the American Bar Association, The *Vanishing Trial*, 30 Litigation 2 (Winter 2004).

Rationally, a party's compulsion to settle claims pre-trial is derived from presumptive risk associated with the alternatives. Conversely, a lack of a discernable and material risk quite rationally imposes no compulsion for a defendant to effectuate settlement at

any point of controversy even in cases where a defendant faces claims of a plaintiff that are cognizable, requisitely containing factual matter sufficient to state a claim that is plausible on its face. Because, as Petitioner has herein demonstrated, the lower courts' rulings in this case is clearly unfair, and unprincipled, falling far beyond the bounds of just outcomes; said rulings undoubtably discourage pre-trial settlement in similar controversies involving *pro se* litigants' merit of claims

This Supreme Court should grant writ of certiorari and also review state court proceedings for infringement of the United States Constitution by judicial fiat and exercise its duty where proper in this case to declare a law or action of trier-of-fact in this case as un-Constitutional. This Supreme Court's review of Michigan courts proceedings and rulings should lead it to conclude that, *inter alia,* meaningful consideration of liberal construction as it relates to pro se pleadings was not given but Petitioner's pleadings were held to inappropriately stringent standards. (*See Haines v. Kerner*, 404, U.S 519, 520-21 (1972); and Apps. K, L, & R).

Further, this Court should take the opportunity to clarify where meaningful, provide bright line precepts for fair treatment of *pro so* litigants, particularly in civil complaints because conceivably, due to, *inter alia*, technological advancements improving access to legal resources, and because some markets will foreseeably remain largely neglected, in terms of representation by attorneys for a variety of reasons. *Pro se* litigation in civil suits may thus, not only be a mainstay on court dockets of the future but, may also be a burgeoning variant of lawsuits brought to courts.

Futility

Futility is the crux of lower courts legal analysis— appeals court holding: "[w]e review de novo the district court's denial of Roseman's motion for leave to amend his complaint because the district court denied the motion on the legal basis that the proposed amendments would be futile." (App. C). The undersigned is unable to find the word futile in Black's Law Dictionary (5th Ed.) and perhaps futility is like

"[f]rivolity, like obscenity, is often difficult to define." *WSM, Inc. v Tennessee Sales Co.* 709 F.2d 1084 (6th Cir. 1983). This Supreme Court should take this opportunity to bring clarity to and substantiate the appropriate use of this determinant—finding unequivocally that futility determination in this case was improper, unfair, erroneous and an abuse of discretion. Equity therefore compels this Court reverse and/or vacate rulings below because *sua sponte* dismissals "are not favored because they are unfair to the litigants and ultimately waste, rather than save judicial resources". *Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 1983). Moreover, "The prejudice is particularly acute with respect to pro se plaintiffs, like the plaintiff in this case, who are generally unskilled in the art of pleading." (*Tingler* @ 1109,1111).

Further, Petitioner was timely in his request to amend complaint noting that "a party must act with due

diligence if it intends to take advantage of the Rule's liberality". *See United States v. Midwest Suspension & Brake,* 49 F.3d 1197, 1202 (6th Cir.1995).

Sua Sponte

In the aggregate this liberality of the *Rule* (*Id.*) along with this Court's requirements for liberal construction of *pro se* pleadings, courts below seem in need of fresh guidance on limits and nature of *sua sponte* dismissal.

For example, lower court's so-called "*sua sponte*" dismissal is procedurally problematic in that in *Tingler, sua sponte* dismissal does not emanate from the motion of a party but the *sua sponte* determination's origin is the procedural discretion of fact-trier, the judge. Hence, the Latin term *sua sponte* describes an action taken "[o]f his or its own will or motion; voluntarily; *without prompting or suggestion.*" ((*Emphasis added*) Black's Law Dictionary, Fifth Edition).

In this instant action, however, "*sua sponte*" dismissal of Petitioner's claims clearly emanates from prompting and suggestion of Respondent, a fact which should in principle cause said prompting to constitute a motion. Pertinently, appeals court acknowledged "*Wells Fargo filed a response, arguing Roseman was not entitled to a restraining order or injunction and* ***suggesting that the court should sua sponte dismiss the case*** *...*". (Emphasis added: App. C). Principally, in fairness and equity, Petitioner should therefore, have been the non-moving party of a motion to dismiss in that Respondents prompted court to dismiss case "*sua sponte*".

Here, in regards to lower courts' ruling in this case, *sua sponte* rule was not properly stated, articulated, constructed or construed but rather deprived by lower courts of character assigned to *its* essential nature.

Proportionately, the essential nature of a motion has different implications and preferential terms and conditions for Petitioner because when considering a Civ. R. 12(B)(6) motion to dismiss, the trial court must review only the complaint, accepting all factual allegations as true and making every reasonable inference in favor of the nonmoving party. *Sprouse v. Miller*, 4th Dist. No. 06CA37, 2007-Ohio-4397, 2007 WL 2410894, at ¶ 5; see *also JNS Ents., Inc. v. Sturgell,* 4th Dist. No. 05CA2814, 2005-Ohio-3200, 2005 WL 1492002.

CONCLUSION

In the aggregate, in this case, Petitioner believes that the irregularities, contempt, and subterfuge of real estate vendors, lenders, Sellers, lower courts, arbitrators can be largely attributed to a problematic social reflex, the stimulus being a black person in various consumer,

legal, and societal context. "[A]s a black American" Justice Clarence Thomas seems to recognize a variant of this familiar mode, reflex, and response—deeming it "a high-tech lynching for uppity blacks who in any way deign to think for themselves, to do for themselves, to have different ideas, and it is a message that unless you kowtow to an old order, this is what will happen to you. You will be lynched, destroyed, caricatured by a committee of the U.S. ...". Supreme Court nominee *Clarence Thomas*; statement before Senate Judiciary Committee, Washington, D. C.; Oct. 11, 1991.

What *Tingler* really reveals in instant case is not that *sua sponte* dismissal was justified, but that, in all likelihood: contravening 42 U.S.C § 1981(a)(1991) a white serial killer convict, Robert L. *Tingler* was, by courts below, granted "full and equal benefits of all laws" (*Id.*) but an "*uppity black*" Petitioner was not. This

Supreme Court should therefore vacate the judgment of lower and leverage its wherewithal to redress Petitioner's grievances.

Moreover, in this instant matter, and in the relevant related state actions, actors drop out and drop in, combining to extend, perpetuate, and effectuate infringement of: Petitioner's right under 42 U.S.C. § 1982 (1978) to, as "white citizens, ... purchase, lease, sell, hold, and convey real and personal property"; and his rights under Due Process Clauses of Constitution. Consequently, Petitioner has suffered, injury, loss and damages. This Supreme Court should therefore in accordance with its oath, timely move to protect and defend the Constitution of the United States (18 U.S. Code §2381) declaring where proper, Petitioner's entitlement to recovery under his claims put forth in this action.

Prepared and submitted by: John L. Roseman, Sr.

Respectfully Submitted,

Date: April 9, 2023

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