

No. 22-1060

RICKS

In The
Supreme Court of the United States

HAYWOOD JACKSON MIZELL, pro se

Petitioner,

v.

THE CITIZENS BANK and
James Weatherford, et al

Respondent(s),

On Petition For Writ Of Certiorari to The
United States District Court for the Middle
District of Alabama, United States
Court of Appeals for the Eleventh Circuit

Supreme Court, U.S.
FILED
JUL 10 2023
OFFICE OF THE CLERK

PETITION FOR REHEARING

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SUPREME COURT, U.S.

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PETITION PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner Haywood Jackson Mizell, *pro se*, respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit based on NEW court rulings both State (1191075) and Federal (22-166).

(Rule 15(8)) permits the filing of a writ supplement when a new and recent SCOTUS or State Supreme Court rulings can impact the petition. Such new case is one decided **May 25, 2023**, by the SUPREME COURT OF THE UNITED STATES in *TYLER v. HENNEPIN COUNTY, MINNESOTA ET AL* No. 22-166, and one Alabama case decided **June 25, 2021**, SUPREME COURT OF ALABAMA in *PENTAGON v. SUSAN R. McMAHAN*(No. 1191075).

TYLER (2023) case involved the issue of a seized and sold asset for the satisfaction of a tax debt, yet the surplus from the sale was not returned to the owner but the excess was kept.

PENTAGON (2021) case involved a Financial Institution and unjust enrichment. The court cited, "The doctrine of unjust enrichment is an old equitable remedy permitting the court in equity and good conscience to disallow one to be unjustly enriched at the expense of another."

Citizens Bank has refused for many years to allow payment in full of the debt by its inability to produce a promissory note debt instrument that was executed simultaneously with a list of assets to secure the promissory note demands in the event of default in payment. No second promissory note was ever signed refinancing the first note along with a revised list of assets that included the FM.

Had there been a valid second promissory note, a total satisfaction sale of the FM could have been permitted. The first promissory note would have been surrendered stamped paid in full when the refinance promissory note was executed and surrendered if paid in full.

Many years had passed with no monthly payment was missed toward the financing of the TV. Suddenly a change, each monthly payment, the bank demanded that a separate mortgage agreement separate from the original promissory note be signed by all stockholders and their wives. A new revised security list that was written that would include both FM and TV licenses. The FM had never been listed as security and certain real estate was removed from the new list. Remember, the new monthly security agreement had NO corresponding promissory note that reflected then remaining principal amount. The bank identified the form signed to be a "Perfected Security Agreement."

Years separated the only monetized promissory note from the newly monthly signed revised list, "Perfected Security Agreement." A "cloud over title" was created by the separation. The property security list is incidental in that the property that secures the promissory note comes into play only when there is a payment default. Separation of the note and security mortgage unit renders the contract null and void and the property to secure the note unmarketable and of zero value. Terms Sheets from any potential buyer could not be satisfied because of the separation. An encumbrance is sold only as a unit consisting of an un-separated promissory note mortgage.

Buyers, even with earnest money, walked because no holder-in-due-course that alone could foreclose was identified.

Simply, Petitioner had a 2004 FM offer and a 2008 TV and FM offer both sealed with earnest money. The sales could not close because the buyers walked upon discovery that the mortgagee, (Respondent) had already sold its “power of sale” to an undisclosed “party of interest”. The buyers would not subject funds to an unknown creditor that might enforce a prior liens and then walked. Term Sheets demanded clear title.

Although the parallel is limited in that TYLER involved lawful public taxpayer debt rather than illegal plunder or unjust enrichment, the recent 2023 Tyler case ruling might be helpful regarding surplus distribution.

There can be no dispute in the fact that Citizens Bank’s president seized the TV, without any authorizing court action, from the Petitioner’s assets and seized it for a front Corporation of which he was also president and, later, as shown in *Broadcasting & Cable*, sold unlawfully the TV to “himself” and kept the \$1.8 million equity rather than returning it to the mortgagor, Petitioner.

Ironically, it cannot be overstated, were the plunder legal, this instant case openly parades property seizure without possession of legal authenticated (“proof of claim”) granting “power of sale” authority. Even if legal, the “stated” equity excess was kept by the seizing party and the excess equity was not returned to the victim, as is the demand of Alabama law.

The Eleventh Circuit’s dismissal opinion heralds the “death of the below maxim.” “Bid rigging” is illegal plunder. This is not a hyperbolic warning, but a fact unless this Court grants review.

It is against equity to deprive freemen of the free disposal of their own property. *Co. Litt.*

223. See 1 Bouv. Inst. n. 455, 460.

Both FM and TV OPERATIONS were seized by Citizens Bank under pretense and **WITHOUT WRITTEN PROOF OF TITLE**. The attorneys representing the Bank said their client had title promissory note but never presented it as **authenticate proof of title** thus making both properties with "cloud over title" thus unmarketable.

The bank seized both and used the court's Chapter 7 Bankruptcy Trustee sale for "valid" appearance so that the FM could be sold by the bank, at one-third its value. (See App 1) Citizens Bank's unprovable statement of its holding of a valid encumbrance sabotaged any sale by the Petitioner.

The wrongful FM foreclosure was ordered by the appointed Bankruptcy Trustee, attorney Carn who was the former attorney for the Respondent, and who, UNDER OATH, stated,

"I have not looked at the original. It is available for inspection. I haven't seen it. It is my understanding that in order for claim to be allowed in bankruptcy, I don't have to see a wet-ink original signature."

The bankruptcy Trustee selected a "non-broadcast Consultant" who was paid \$100,000 to conduct a private, non-public auction of the FM. His action defined "bid rigging," illegal plunder. See Office of Public Affairs U.S. Department of Justice Press Release for similar "bid rigging" activity, which was declared unlawful, dated September 15, 2011. The headline read, "Alabama Real Estate investors Agree to Plead Guilty to Conspiracy to Rig Bids for the Purchase of Real Estate at Public Foreclosure Auction."

Consultant rejected as untimely, in his privately held auction, offers over \$1.1 million. Offers were considered as timely only when made by anyone already qualified by the FCC as a licensee.

Now to TV sale: Citizens Bank seized and transferred control of the TV, done so as necessary to satisfy remaining balance of the "imaginary debt," **done without court involvement** and willfully done without owner's knowledge or consent.

In addition, by seizing control of both FM and TV, the bank generated \$4.1 million to satisfy an "imaginary encumbrance," valued in the bankruptcy court to be \$2.3 million. **The bank even kept the excess of \$1.8 million.**

There has been no surrender of the debt instrument stamped paid in full. (See Ala Code 7-3-501(b)(2),

Enclosed from Original Complaint EXHIBITS THREE \$3 MILLION TERM SHEET OFFER FOR WRJM-FM and EXHIBIT FOUR (both now Appendices) where *Broadcast & Cable* publication reported sale of WRJM-TV for \$3 million. Both sales were within seven months

The exhibits show conclusively the liquid value of the two separate assets. Neither could be sold by the petitioner.

Citizens Bank has never given written proof that it possessed **holder-in-due-course rights**. Said absence makes null and void any contract with Citizens. assets.

The Respondent, Citizens Bank, made void the contract by NOT being entitled to the funds from the foreclosure proceedings. A Petitioner given rights could have sold the TV or FM and satisfied the debt.

NO TIMELY REQUESTED TRIAL BY JURY, TO ESTABLISH THE FACTS, WAS ORDERED, another deprivation of freemen's right. The denied jury trial

would have allowed the public to discover whose private property rights were deprived and done to favor whom.

THE FREEMAN'S RIGHT OF REDEMPTION WAS DENIED BECAUSE ONLY THE HOLDER-IN-DUE-COURSE CAN BE PAID TO REDEEM THE PROPERTY, SHOULD THE OWNER WISH TO SELL THE PROPERTY TO A RESPONSIVE KINSMAN REDEEMER.

ALABAMA STATUTE ABOUT RIGHTS AND NULL AND VOID CONTRACTS

Ala. Code § 7-3-305. Defenses and Claims in Recoupment.

7-3-305c An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

Ala. Code Section 35-10-9 Sales contrary to article null and void.

All sales of real estate, made under powers contained in mortgages or deeds of trust contrary to the provisions of this article, shall be null and void, notwithstanding any agreement or stipulation to the contrary.

(See *Wright v. Emory*, 41 So.3d 290,292(Fla. 4th DCA 2010) (“[An] attorney's unsworn and unverified statements do not establish competent evidence.”)).

The Complaint lodged against the Respondent, The Citizens Bank, presented these facts in simple hope that the Petitioner be allowed to sale only necessary assets that would thereby satisfy each and

every valid lien encumbrance thus removing all obstructing "clouds," and with freedom to sale thus convey clear title. The outstanding debt was said to be \$2.3 million.

The FM that the Respondent sold first, with the aid of court action, would have (with an arm's length sale (per App. 1) left the TV untouched and debt free.

The reason the court's FM sale was first, is that the "gambling enterprise" that had bought the separated promissory note in secret, desired control of both the FM and the TV in the creation of a "media machine." so described by the "gambling enterprise member" (in a sworn statement). The "media machine" was deemed essential for attraction of select investors needed to materialize a planned Southeast Alabama Casino Charitable Bingo campus. By the way, after the desired casino construction was completed the State of Alabama raided the campus that the state considered illegal resulting in the estimated loss of \$179 million investments.

The FM bankruptcy court action removed all semblance of Petitioner's property rights. FM control was transferred absent any valid and essential "proof of claim." The FM was sold for \$1.1 million with partiality not for its \$3 million value.

The Respondent (then President Whit Armstrong) simply seized the TV and sold it without court action.

The total return amount from unlawful seizures of both assets by the bank was \$4.1 million against \$2.3 million alleged debt leaving liquid equity of \$1.8 million. The foreclosure action taken presumed the foreclosure lawful, even though it was done by one NOT the holder-in-due-course.

Why could the bank seize and then sell both FM and TV keeping the equity, but the PETITIONER could not sell or redeem both assets because of the "cloud" over their titles?

Citizens Bank kept the excess of \$1.8 million in liquid equity rather than returning it to the borrower, done in violation of Ala. Code § 5-26-17 Prohibited acts and practices (1) Obtain property by intentional fraud or intentional misrepresentation.

Equity can be defined as the amount of money the owner of an asset would be paid after selling it and any debts associated with the asset were paid off.

The Petitioner was duly warned by Thomas Jefferson. Loss would occur if banks took over their property as was proven in this instance. Private property rights define America.

"I believe that banking institutions are more dangerous to our LIBERTIES than standing armies.

If the American people ever allow private banks to control the issue of their currency, first by inflation, then by deflation, the banks and corporations that will grow up around (these banks) will deprive the people of all property until their children wake up homeless on the continent their fathers conquered." Thomas Jefferson

PETITION FOR REHEARING WITH REASONS

The original certiorari petition asked this Court to resolve basically only two issues: (1) whether a creditor without holder-in-due-course rights can enforce a "debt obligation" through deceptive practices, and (2) whether the Eleventh Circuit's dismissal of Petitioner's seeking of help in, at least, recovery of \$1.8 million liquid equity, be reversed.

CONCLUSION

For the reasons set forth in this Rehearing Petition, Haywood Jackson Mizell, *pro se*, respectfully

requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

Inalienable rights to private property, a trial by jury, right to meet an obligation of a contract, and the right of redemption should not be taken away without reasonable proof. Equal justice of law should remain impartially applied.

Respectfully submitted, DATED: July 3, 2023

s/
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App. i

APPENDICES

APPENDIX A

Dated April 9, 2004, TERM SHEET Styles Media Group Offer Of \$3 Million For WRJM-FM with \$50,000 DEPOSIT CHECK 0480.....App.1

APPENDIX B

Dated May 18, 2009 - BROADCAST CABLE REPORT OF WR JM-TV SALE IN SPRING OF 2009.....App.4

APPENDIX A

**STYLES MEDIA GROUP OFFER OF \$3
MILLION FOR WRJM-FM
with \$50,000 DEPOSIT CHECK 0480
dated 4/9/2004
TERM SHEET**

PARTIES: Media Group, LLC, or its affiliate
("Buyer") Stage Doo Development,
Inc.
("Seller").

TRANSACTION: Buyer will acquire from Seller all
of the assets and properties
tangible, intangible and personal,
used or held for use in connection
with the operation of the radio
broadcast station WRJM-FM (the
"station") including without
limitation, the licenses, permits
and other authorizations issued by
the FCC to own and operate the
station (the "Station Licenses").
Without limiting the foregoing, the
purchased assets will include the
real property interests associated
therewith, all motor vehicles,
equipment, towers, furniture and
fixtures used or held for the use
with the stations and contract
rights arising from or relating to
the stations. The purchased assets
shall be transferred and assigned
free and clear of all liens and
encumbrances and will constitute

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all the assets necessary for the Buyer to operate the station. All cash on hand and accounts receivable shall be excluded and returned with the seller.

PURCHASE PRICE

**AND PAYMENT: \$3 million dollars (\$3,000,000.00)
payable in cash at closing.**

OTHER TERMS:

Purchasing Agreement Buyer and Seller will use their best efforts to sign a purchase agreement concerning the matter contemplated herein within thirty (30) days of the signing of this Term Sheet.

Ernest Money contemporaneous with the signing of this letter of intent Buyer acknowledges the receipt of Fifty Thousand Dollars (\$50,000.00) as a down payment to be credited towards the purchase price. By cashing thus check, seller agrees to sell the station to the buyer for the terms contained herein. Upon signing the definitive agreement, buyer shall place Five Percent (5%) of the purchase price in escrow with a mutually acceptable escrow agent as an advance deposit against the purchase price.

Closing the closing of the transaction contemplated by this Term Sheet shall occur in Dothan, AL no later than Ten (10) business days after the FCC's approval of the assignment application becomes a final order.

Exclusivity Seller agrees to negotiate exclusively with buyer and not solicit, negotiate, or entertain other offers for seller, its assets or stock, or the station for a period of thirty (30) days.

Confidentiality Neither Seller nor Buyer shall disclose the existence or contents of this term sheet to any person other than Sellers or Buyers

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representatives, who will be asked to hold such documentation in confidence, and neither shall make any announcements concerning the matter set forth herein.

Broker Buyer and Seller agrees that the payment of the brokerage commission will be due and payable in full at Closing to Michael J. Bergner of Bergner and company. It will be the sole responsibility of the seller.

Expiration The offer by Buyer contained in this Term Sheet shall expire at 5:00 PM CT on Wednesday, April 14, 2004.

Styles Media Group LLC Stage Door Development
Inc.

Date 4/9/04 _____ Date

APPENDIX B

***BROADCAST CABLE REPORT OF
WR JM-TV SALE IN SPRING OF 2009***

Deals - 2009-04-18 06:00:00
Broadcasting & Cable

Deals

by BIA financial networks-broadcasting
& cable, 412012009 12:00:00 a.m. MT

TV

WR JM TV Troy, Ala

Price: \$3,000,000.00

BUYER: Southern venture capital group
LLC (David Harrison managing
member)

Seller: Enterprise Capital Corp. (Whit
Armstrong, president.)

Facilities: CH. 67, 2,820 kW, ant. 1,066
ft.

AFFILIATION: My Network

COMMENT: \$3 million plus in
undisclosed citizens Bank lending
amount to seller prior to the execution of
an LMA \$50K earnest-money deposit.
Buyer is already operating the station
via a LMA from January 16.

CERTIFICATE OF COMPLIANCE
No. 22-1060

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PETITION FOR REHEARING Rule 44 Compliance

CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, I, Haywood Jackson Mizell,
Pro se Counsel of record for petitioner Haywood Jackson Mizell, hereby certify.
that the petition for rehearing is restricted to the grounds specified in Rule 44.2, including
intervening circumstances of rulings by the court concerning distribution of seized assets
in excess of debt, which were decided as late as May of this year, recent rulings made by
Supreme Courts. I further certify that the petition for rehearing is presented in good faith
and not for delay.

July 19, 2023 /s/ Haywood Jackson Mizell



Haywood Jackson Mizell