

22-5797

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

WELLS FARGO BANK, N.A., AS TRUSTEE,)
ON BEHALF OF THE HOLDERS OF THE)
HARBORVIEW MORTGAGE LOAN TRUST)
MORTGAGE LOAN PASS-THROUGH)
CERTIFICATES, SERIES 2006-12,)

Plaintiff-Respondent,)

v.)

MARIE C. RUSSO,)

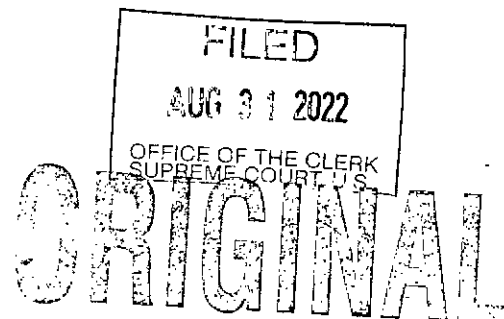
Defendant-Petitioner.)

CORRECTED PETITION FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE
STATE OF NEW MEXICO

NMSC No. S-1-SC-39084
NMCA No. A-1-CA-38260
NMDC D-101-CV-2016-00158
NMDC D-101-CV-2011-03167

CORRECTED PETITION FOR WRIT OF CERTIORARI

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QUESTION FOR REVIEW

Whether the Judiciary of the State of New Mexico violated my right of substantive due process pursuant to the XIVth Amendment of the U.S. Constitution thereby depriving me of fair adversarial process when the lower court (the "2016 Case") issued a summary foreclosure judgment against me even though it lacked jurisdiction to do so as a result of a different court's (the "2011 Case") order that stripped the 2016 Case of decisional authority, and the 2016 Court issued that judgment in disregard of the applicable State's laws; and then the State's Court of Appeals (the "NMCA") chose to not address the timely raised due process issue and to disregard, without explanation, several of the State's precedential decisions contrary to the State's requirement that departure from a precedential decision required demonstration of compelling justification; and then the State's Supreme Court (the "NMSC") chose, by its denial of my timely filed petition for a writ of certiorari, to not address this due process issue, violations of the State's well established stare decisis law, and the whimsical or biased determinations and conduct demonstrated by the district court and the NMCA.

LIST OF ALL PARTIES

The caption of this case names all of the parties. (Rule 14.1(b)(i)).

CORPORATE DISCLOSURE STATEMENT

Not applicable per Rule 29.6.

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Not required per Rule 14.1(c) because this Petition is filed pursuant to Rules 33.2 and 39.3, and does not exceed 5 pages as defined by Rule 33.2(b).

TABLE OF CITEC AUTHORITIES

Not required per Rule 14.1(c) because this Petition is filed pursuant to Rules 33.2 and 39.3, and does not exceed 5 pages as defined by Rule 33.2(b).

LIST OF RELATED PROCEEDINGS

For each proceeding listed below, Wells Fargo Bank, N.A., as Trustee, on behalf of the Holders of the Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-12 ("Wells Fargo") is the Plaintiff or Plaintiff-Respondent, and Marie C. Russo is the Defendant or Defendant-Petitioner. These are the only parties.

In the Supreme Court of the State of New Mexico

Case No. S-1-SC-39084 (the "NMSC Case")

03/24/22 Order [denying petition for writ of certiorari]

06/03/22 Order [denying rehearing re denial of petition for writ of certiorari]

In the Court of Appeals of the State of New Mexico

Case No. A-1-CA-38260 (the "NMCA Case")

09/22/21 Decision [affirming summary judgment of lower court]

10/14/21 Order Denying Motion for Rehearing

State of New Mexico, County of Santa Fe, First Judicial District Court

Case No. D-101-CV-2016-00158 (the "2016 Case")

10/04/18 Judgment for Decree of Foreclosure and Order of Judicial Foreclosure Sale

05/10/19 Order Denying Ms. Russo's Motion to Reconsider the Court's Final Judgment

State of New Mexico, County of Santa Fe, First Judicial District Court

Case No. D-101-CV-2011-03167 (the "2011 Case")

01/06/16 Order Granting Plaintiff's Expedited Motion to Dismiss Foreclosure Complaint without Prejudice

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS

I am not aware of any official or unofficial reports of opinions or orders entered in the related proceedings of this case.

BASIS FOR JURISDICTION

The basis of jurisdiction in this Court consists of the 14TH Amendment of the U.S. Constitution, Sec. 1 ("nor shall any State deprive any person of life, liberty, or property, without due process of law"), US Supreme Court Rule 14.5 (timeliness of this corrected petition), and 28 U.S.C. Sec. 1257(a) ("Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where ... any ... title, right, privilege, or immunity is specially set up or claimed under the Constitution..."). I seek a review of the 10/04/18, Judgment for Decree of Foreclosure and Order of Judicial Foreclosure Sale (Appendix, A) in accordance with the stated laws of New Mexico or an order to the NMSC requiring it to make or supervise a proper legal determination of my rights since so far it has refused to get involved pursuant to the 06/03/22 Order of NMSC denying rehearing of denial of my petition for writ of certiorari (Appendix, F).

STATEMENT OF THE CASE

This litigation commenced in 2011 (Case No. D-101-CV-2011-03167) (the "2011 Case"). It was dismissed without prejudice by an order dismissing the case (the "ODC") (Appendix, G) following denial of Wells Fargo's motion for summary judgment and prior to determination of my motion for summary judgment which was fully briefed and argued and awaiting a decision. The ODC ordered the creation of Case No. D-101-CV-2016-00158 (the "2016 Case") and required immediate consolidation of same back into the 2011 Case in order for final

determination of the entire dispute between the parties to be resolved in the 2011 Case. The ODC effectively created a temporary dismissal of the 2011 Case, limited the decisional authority of the 2016 Case, and reserved to the 2011 Case the decisional authority over the case. (e.g., Appellate's Brief in Chief ("BIC"), Part III.A.4, Appendix, H). My motion for summary judgment was never decided in the 2011 Case nor did that court enforce the ODC or make an effort to move to a trial of the matters.

Other than having created the 2016 Case, there was no compliance with the ODC. I sought both reversal of the ODC since my dispositive motion remained undecided and sought compliance with the ODC which was denied by both the judge who issued the ODC and the judge in the 2016 Case. (BIC, Parts II.w, aa, and jj, Appendix, H). The judge in the 2016 Case ultimately granted summary judgment against me in violation of various New Mexico statutes, the State's precedential decisions respecting foreclosure requirements of the foreclosing party, and violations of precedential decisions respecting judicial standards respecting a motion for summary judgment. I sought rehearing of the judgment, which was denied.

I filed a timely appeal to New Mexico's Court of Appeals ("NMCA"), Case No. A-1-CA-38260. My BIC (Appendix H) raised many issues, including the possibility that my due process rights would be violated if the NMCA did not require a determination of the issues in accordance with the State's statutory law, rules of procedure, judicial standards and precedential decisions. (BIC, Part III.B, Appendix

H). The State's precedential decisions required each issue I raised to be decided by de novo review, e.g., respecting matters of construction of an order, determination of a motion for summary judgment, finality of orders, and the jurisdiction of the NMCA respecting matters not timely appealed. (Motion for Rehearing, Part I, Appendix, J). The Decision (Appendix, B) issued by the NMCA was a short, conclusory paper that did not specifically address the due process issue nor any issue raised, but which asserted that the NMCA was bound by *Farmers, Inc., v. Dal Mach. & Fabricating, Inc.*, 1990-NMSC-100, ¶8, 111 N.M. 6, 800 P.2d 1063 ("The presumption upon review favors the correctness of the [district] court's actions.") to presume that the conduct of the lower court was correct contravenes of NM's publicized standards regarding de novo review of the issues then before the NMCA. *Farmers, Inc.* involved a trial on merits, not a summary disposition hearing, and New Mexico's precedential law, at least as publicly stated, requires review de novo for each issue raised by the BIC. Consistent with the BIC, I urged the NMCA by my Motion for Rehearing (Appendix, J) to apply the correct standards of review but that request was denied. (Appendix E). I timely filed a petition with the New Mexico Supreme Court (the "NMSC") for writ of certiorari to the NMCA (Appendix, J). I raised the issue of violated due process before the NMSC. (Appendix, J, Parts I, II (Issue 3) and III.A (Issue 3). The NMSC denied that petition (Appendix C), my request to submit a reply to Wells' Fargo's Response (Appendix L), and my motion for rehearing (Appendix, F).

ARGUMENT

To the extent involved in my lawsuit, New Mexico's statutes, rules and precedential decisions appear to call for judicial determinations respective of due process and provision of fair adversarial processes. For reasons unknown, in my situation, all of the involved State courts ignored or disregarded the State's laws. The appellate documents in the attached Appendix demonstrate the facts and issues and resolutions. Wells Fargo did not contest the accuracy of my summary of relevant facts (BIC, Part II, Appendix, H) and did not refute my statements of the relevant legal standards (BIC, Part V, Appendix H and Reply BIC, Part I, Appendix I) so the factual underpinnings and controlling laws are as set forth in the BIC.

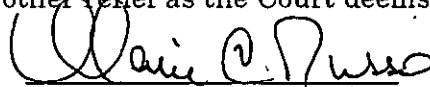
My case should have been decided in accordance with the State's law. I believe a proper decision would have held that Wells Fargo failed to prove its substantive foreclosure standing on more than one occasion and that judgment in my favor should have issued before commencement of the 2016 Case and that it lacked authority to issue judgment against me. I have sought a fair adversarial process that complied with the publicized laws of New Mexico. That is all I have ever asked. Instead, I have been surprised by judicial determinations reflecting whim, inattentiveness or maybe bias, but definitely determinations guided by New Mexico's publicly stated law.

Due process requires not only establishing an appearance of adversarial fairness but of actually following the publicized law. (*Chicago, B & Q.R. Co. v. Chicago*, 166 U.S. 226, 234-235), 17 S.Ct. 581, 41 L.Ed. 979 (1897) ("In determining what is due process of law regard must be had to substance, not to form.") "The Due

Process Clause contains a substantive component that bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.' *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Due process "centrally concerns the fundamental fairness of governmental activity." *Quill Corp. v. North Dakota*, 504 U.S. 298, 312, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992), overruled on other grounds, *South Dakota v. Wayfair, Inc.*, 585 U.S. ___, ___, 138 S.Ct. 2080, 2092-2093, 201 L.Ed.2d 403 (2018). Precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. *Grayned v. City of Rockford*, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). What process is due varies according to specific factual contexts. *Hannah v. Larche*, 363 U.S. 420, 442, 80 S.Ct. 1502, 1514, 4 L.Ed.2d 1307 (1960). I do not assert that New Mexico intentionally deprives all homeowners of due process, but that I did not receive substantive due process.

The BIC (Appendix H) and other filings (Appendix, I-M) demonstrate the issues and failures of the New Mexico judiciary to abide by its own laws in my specific case. If further documents from the records proper of the cases are needed, please let me know and I'll gladly provide them.

WHEREFORE, I pray that this Court reverse the judgment or issue a writ of certiorari to the NMSC, and for such other relief as the Court deems appropriate.



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