22-6410

No. _____

ORIGINAL

IN THE
Supreme Court of the United States

FILED
DEC 06 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Pernell El
Petitioner

v.

WELLS FARGO BANK NA, Charles Scharf. Carrington Mortgage LLC; Bruce Rose; MORTGAGE ELECTRONIC REGISTRATION SERVICE; LAWYERS TITLE
Respondent

On Petition for Writ of Certiorari
To the United States Court of Appeal
For the Ninth Circuit
Ninth Circuit Case Number: 21-55976

PETITION FOR WRIT OF CERTIORARI

Pernell El
Pro Per
619-750-4787
c/o P.O Box 151162
San Diego, California
92175

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SUPREME COURT, U.S.

QUESTION (S) PRESENTED

1 Weather the district court errored, by dismissing the Petitioner's claim based on the standard of *Perez v. Mortgage Electronic Registration Sys. 959 F 3d. 334 (9th cir. 2020).* Wherein, the preemptive foreclosure argument was inapplicable, as it was not argued by the Petitioner.

2. Weather the appeals court errored, in dismissing the Petitioner's claim based on *Smelt v. County of Orange, 447 F. 3d 673 (9th Cir. 2006)*, st ? Petitioner's private right as the signatory, is a non issue, and without question.

3. Whether the district court errored, by not "....construe the complaint in a light most favorable to the plaintiff, accept all of the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief.'" *Amadasu v. The Christ Hosp., 514 F.3d 504, 506 (6th Cir. 2008).*

4. Whether the court of appeals errored by not reviewing the case de novo, and ignoring the Petitioner's fraud claim. See *Amburgey v. United States*, 733 F.3d 633, 636 (6th Cir. 2013).

5. Under the principle of lis pendent, was Wells Fargo Bank Na, allowed to transfer interest in the property, after the case commenced?

6. Under applicable treaty obligations, were the lower courts obligated, to give due consideration, to said obligation? See *Louis Henkin, Foreign Affairs an the U.S. Constitution (2d ed. 1996) Restatement (Fourth) of Foreign Relations § 307 cmt. a (2018)*

7. Whether the district court appeals errored, by not giving due consideration to the evidence presented by the Petitioner, See Boyd vs. Boss (Ont. CA 2021)

8. Under federal law, 12 CFR 1026. 39, "covered person" can the defendant Wells Fargo Bank NA own the loan and act as the servicer?

9. Under federal regulation12(b)(6) motion, did the district and appeals court error, by relying on the Respondents, reply response argument, and not their affirmative defense?

PARTIES AND RULE 29.6 STATEMENT

The caption of this case contains the names of the parties who participated in the proceedings herein, either directly or through counsel. The Petitioner, Pernell El is herein referenced as Mr. El is in pro per. The Respondent(s), Wells Fargo Bank NA, Charles Scharf, Carrington Mortgage LLC, Bruce Rose, Mortgage Electronic Registration System have not made an official statement, the defendants' through their attorney(s), were granted a 12(b)(6) Motion to Dismiss the Petitioner's complaint (FAC).[1] No corporate disclosure statement is necessary on the Petitioner's behalf.

[1] Attorney's of record for the defendants:
John Dineen, Anna Zarndt, Parisa Jassim

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OPINIONS AND ORDERS BELOW

The district court issued an unpublished opinion on August 25th 2021, dismissing the Appellant's claim under Fed. R. Civ. P. 12(B)(6), without a hearing. [2] The Petitioner Motion for Injunctive Relief was denied, by the district court on the date of August 25th 2021. The district court granted the defendants' Request for judicial Notice, despite the Petitioners opposition on August 25th 2021.[3] Judgment was entered in favor of the Respondents' on the date of September 3rd 2021.[4] The Ninth Circuit Court of Appeals issued an unpublished opinion / memorandum dismissing the petitioners Appeal, filed on the date of September 21st 2022 (Appendix C, p. 9-11)[5] The Ninth Circuit Court of Appeals, in its order, denied the Petitioner's right to be heard, concluding the case was suitable without a hearing, citing Fed. R. App. P. 34(a)(2). The Petitioner was denied the opportunity for a hearing, therewith the Petitioner timely filed, a motion for reconsideration, entered into the record on the date of 9/28/2022.

JURISDICTION

The Supreme Court of the United States has original jurisdiction under Article III Section II, wherein issues of diversity, federal question(s), constitutional and treaty provisions must be decided; and under V1 of the Supremacy Clause, wherein all debts and engagements entered in before the Constitution are binding against the United States.... All treaties made under the authority of the United States shall be the Supreme law of the land. This Court has appellate jurisdiction, as to law, and fact. This Court further has jurisdiction under 28 U.S.C. § 1254(1) to review the Circuit Court's decision on Writ of Certiorari.

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[2] Pernell El v. WELLS FARGO BANK NA et al
No. 2: 21-cv-03137 –AB –KES (2021) US Central District California / district judge Andre Birotte Jr. (Appendix B) pg. 3-8

[3] Id. at 6

[4] Appendix (A) pg. 1-2

[5] Pernell El v. WELLS FARGO BANK NA et al (2022) No. 21: 55976, United States Courts of Appeals for the Ninth Circuit / circuit judges, Rawlinson, Owens, O'Scannlain

STATEMENT OF THE CASE

Introduction

This writ of Certiorari presents a multitude of issues that were not resolved at the district court level, nor were they adequately addressed at the Ninth circuit. The crux of Petitioner's claim, as argued at the district court, was that Wells Fargo Bank NA, and its co conspirators specifically John Jaimes and Lynn Maria Sevick committed fraud, by misrepresenting themselves. The Petitioner argued that he uncovered the fraud, in April 2020, and then on the date of April 13th 2020, the Petitioner went to a local Wells Fargo Bank Na branch, in order to ascertain information regarding the subject mortgage and assignment of deed of trust. On August 2nd 2020, the Petitioner sent inquiries to the acting CEO, Charles Scharf, in order to seek remedy. (See FAC, Dckt. Entry 11, page 9 and 10). First, the Petitioner argued that Wells Fargo Bank NA and its operative agents, self assigned a the 2012 Corporate Assignment Deed of Trust (DOC# 2012-0380816) "the Assignment", to themselves, using public notary (31049019) Lynn Maria Sevick, as the authorized agent, to assign the beneficial interest in the 04/ 04/ 2011 original Deed of Trust (DOC 2011-0160252) loan agreement, herein the "the Agreement", in the amount of $ 299,150.00, between the Petitioner and the original mortgagee DHI Mortgage.[6] The Petitioner signed "the Agreement" in 2011, with DHI Mortgage. Wells Fargo Bank NA, according to the records, appeared to have received from DHI Mortgage, the beneficial interest in the 2011 agreement in the year of 2012. The Petitioner argued that the purported 2012 Corporate Assignment of Deed of Trust was invalid, as there is no power of attorney, authorizing the purported "Assistant Secretary" Lynn Maria Sevick, acting as the authorized agent, the authority to assign the beneficial interest to Wells Fargo Bank NA, in 2011 Deed of Trust "the Agreement". The Petitioner supplied the district court, with evidence that Lynn Maria Sevick, was a notary, who has notarized documents for Wells Fargo Bank NA in the past.[7] According to case law, in order to effectuate a proper assignment, the requisite *power of attorney* must be attached to the assignment, to show, by what grant authority, the assignor has to assign any beneficial interest. [8] The district court, and the appeals court, ignored this fundamental principle of law, and the evidence, wherein the two-page Corporate Assignment of Deed of Trust "the Assignment", is on its face. void of the requisite power of attorney, rendering it invalid. . (See Dckt. 22, Exhibit A1) Best illustrated in the *Farmers case (2008).* wherein it states " (A) to have a proper assignment of a mortgage by an authorized agent, a power of attorney is necessary to demonstrate how the agent is vested with the authority to assign the mortgage." See *Wells Fargo Bank, N.A., v Farmer 2008 NY Slip Op 50199(U) [18 Misc 3d 1124*

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[6] Dckt. Entry 22, RJN / Exhibit A6 (2011 Deed of Trust)

[7] Dckt. Entry 48, RJN / Exhibit 5

[8] Dckt. Entry. 11, paragraph 31 and 48

In the year 2012, Wells Fargo Bank NA, filed an invalid Corporate Assignment of Deed of Trust "the Assignment" (DOC # 2012- 0380816) at the county recorder of Riverside County, purporting to own the beneficial interest in the original agreement, between the Petitioner and DHI Mortgage.[9] Second, the Petitioner argued, at the district court, that Wells Fargo Bank NA, and its purported trustee John Jaimes, sent the Petitioner two correspondences, demanding payment and threatening foreclosure, in the year 2012. The two threatening correspondences, were titled as NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST, and filed at the county Recorder of Riverside County. under document number (2012 -0554808).[10] Said documents. purported that Wells Fargo Bank NA was the beneficiary. and John Jaimes (NBS DEFAULT SERVICES LLC). was the trustee. acting on behalf of the beneficiary. of the beneficial interest of 2011 Deed of Trust. "the Agreement". The NOTICE OF DEFAULT ELECTION TO SELL UNDER DEED OF TRUST. are enumerated as exhibit A and AA (Dckt. Entry. 22). Exhibit AA. signed by John Jaimes states. "NOTICE IS HERBY GIVEN: That NBS Default Service. LLC is either the original trustee. the duly appointed substituted trustee or the beneficiary. or acting agent for the trustee or the beneficiary under a Deed of Trust dated 04/04/2011. executed by GERRAD PERNELL SWAHILI and FATIMA SWAHILI. HUSBAND AND WIFE. as trustor. to secure certain obligations." On the date of November 16th 2012. three months after the fraudulent Corporate Assignment Of Deed of Trust. was filed at the county recorder. Riverside County. an unnamed agent filed NOTICE OF DEFAULT ELECTION TO SELL UNDER DEED OF TRUST, (DOC # 2012-0554808) at the county recorder, of Riverside County.

The Petitioner argued at the district court. that he was induced by the fraud. and relied on the misrepresentation. that the 2012 assignment. was valid. to the extent that John Jaimes. acting as trustee for Wells Fargo Bank NA. had the authority. to initiate a foreclose action on the Petitioner's property using the invalid assignment "the Assignment". Due to the aforementioned reliance. the Petitioner signed. a HUD loan in 2013 (DOC # 2013 -0388149) in the amount of $ 88. 129.91. creating an encumbrance on the said property. [11] The Petitioner moved past mere speculation. and supplied the court with ample evidence to infer. that the subject 2012 assignment. authored by Lynn Maria Sevick was defective and invalid. as there is no power of attorney, affixed thereto. (See Dckt. Entry, 48 / RJN, Ex. 5)

Procedural Back Ground

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[9] Dckt. Entry. 22, RJN / Exhibit A1

[10] Dckt. Entry 22 / Exhibit A and AA

[11] Dckt. Entry 11 / pg. 7,8,18, and 19 / 30328 Vercors street, Murrieta, Ca "92563"

The Petitioner served. on Wells Fargo Bank NA. and Charles Scharf a notice of pending litigation on the date of February 16th 2021.[12] The Petitioner filled his lawsuit against Wells Fargo Bank NA. at the district court. on April 12th 2021. Charles Scharf Wells Fargo Bank NA. sent the Petitioner a notice of loan transfer. to Carrington Mortgage LLC. Carrington Mortgage and Bruce Rose. acting as the purported loan servers received a Notice of *Lis Pendens* from the Petitioner on the date of April 20th 2021.[13] Wells Fargo Bank NA and acting president Charles Scharf according to their submitted documents. filed at the county recorder of Riverside County an instrument titled. Assignment of Deed of Trust (DOC # 2021- 0264133). wherein the beneficial interest in the 2011 Agreement. between the Petitioner and DHI Mortgage. was purportedly assigned to Willington Savings Fund Society. FSB Stanwich Mortgage Loan Trust I. herein "the Creditor". on the date of April 28th 2021. (Dckt. Entry 25. Exhibit 7). The Creditor. according to their documents. funded CMS loan # 7000307930. in the amount of $ 201. 386.53. (See DT. 48 / RJN Exhibit 3). According to the documents. "the Creditor" of the private account / loan # 7000307930. purportedly obligated the Petitioner and his wife to said account. The Petitioner argued that the he is not obligated to the purported Creditors. private loan account. The Petitioner has no agreement, with "the Creditor", and or who received the benefit, of said credit.

The defense argued that Willington Savings Fund Society. FSB Stanwich Mortgage Loan Trust I. was an "Investor". Whether creditor or investor. the Petitioner argued that neither Wells Fargo Bank NA. nor the purported Creditor was the "Covered Person" as defined by 12 CFR 1026.39. [14] (see Dckt. Entry 11. paragraph 45 / Opening Brief. pg.) The Petitioner received Bruce Rose and Carrington Mortgage LLC. on behalf of "the Investor / Creditor a notice of an intent to foreclose on the date of June 19th 2021. two months after the law suit commenced. [15] The Petitioner argued: at the district court. that the April 28th 2021. assignment between Wells Fargo Bank and NA, and "the Creditor", was void, for the following reasons: 1.) Wells Fargo Bank NA, and Charles Scharf had no authority to assign any of the beneficial interest, in "the Agreement" between DHI Mortgage and the Petitioner 2.) The Appellant's lawsuit predated the void assignment, between Wells Fargo Bank et al, and Wilmington Savings Fund Society, FSB, as Trustee of StanWich Mortgage Trust I. (See Dckt. Entry. 49, page 5 and 7). The principle of lis pendens is also applicable here, wherein Bruce Rose and

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[12] Dckt. Entry 48 / Exhibit 2

[13] Dckt. Entry 48 / Exhibit 1

[14] "Covered Person", under 12 CFR 1026. 39 become the owner of the loan, by acquiring legal "title of the debt obligation by purchase or assignment. The servicer of the loan shall not be treated as the owner of the obligation." Wells Fargo Bank NA, serviced the loan, and received an assignment; which is unlawful under this title.

[15] Dckt. Entry 48 / RJN / Exhibit 4

Carrington Mortgage LLC, were given notice of the pending litigation, against Wells Fargo Bank NA, bonding them, and the purported Creditor, to an adverse judgment. (Dckt. Entry 49, page 6 and 7/ Dckt. Entry 11, page 14). *In Empire Land Canal Co v. Engley, 18 Colo. 388, 33 P. 153,* the court deduced, a notice filed for the purpose of warning all persons that the title is to certain property is in litigation....if they purchase the defendant's claim the same, they are in danger of being bound by an adverse judgment." See also *Wells Fargo Bank, v. Byrd, 178 Ohio App. 3d 28, 2008-Ohio-4603, 897N.E.2d 722(2008)* wherein, "If plaintiff has offered no evidence that it owned the note and mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law." In Byrd, the same principle applies, to the extent, if the defendants offered no proof that owned any beneficial interest in the mortgage before the complaint was filed, they would not be entitled to judgment as a matter of law. The Petitioner argued Carrington Mortgage LLC, and Bruce Rose have no standing, no contract with the Petitioner, and a void assignment. See *Hartlog v. Collin & Shield [1939] 3 All Er 566,* holding "the other party cannot simply 'snap up' a contract and enforce it."[16]

The Respondents' attorney filled on behalf of the defendants, two judicial notices, requesting that the district court; take notice on the 2011 Deed of Trust, between DHI Mortgage and the Petitioner "the Agreement". (See opening Brief, page 26) The Petitioner opposed both judicial notices, arguing that the Respondents cannot use the 2011 Deed of Trust, as a defense, because they are not a party to it. See *STATE EX REL. DALLMAN, V. COURT OF COMMON PLEAS, Supreme Court of Ohio, (July 11, 1973)* "A party lacks standing to invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the subject matter of the action." See also, *PEDELFORD FAY CO. V. MAYOR ALD. CITY SAVANNAH, Supreme Court of Georgia (Jan 1st 1854) 14 Ga.* wherein it was held that the STATE "you can not use the constitution as a defense, because you are not a party to it" Further, referencing the constitution, "It may be considered as a great power of attorney, under which no power can be exercised, but what is expressly given." Id. The Petitioner did not expressly give the Respondents the permission to use the 2011 Deed of Trust / "the Agreement"; to that affect the district court was in error, stating, "The court grants, notice over the Plaintiff's implausible objections to the authenticity of the documents" (Appendix B, page 6). The Petitioner argued in his Opening Brief, that district judge allowed the Respondents, to judicially notice redacted / sealed documents in violation of its local rules and his standing order. (Opening Brief, page 27, 28, and 29)

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[16] Dckt. Entry 49, pg. 8,9,and 10 / Carrington et al entered into a secret agreement, via their void assignment, and attempt to enforce the obligation on the Petitioner. The Respondents collectively conspired together at the appeals court, by violating appeals rule 30 1-4 (appeal docket 22 and 25) Further, omitting documents.

The Respondent's affirmative defenses in their 12(b)(6) motion to dismiss are three fold. appearing on the record as (Dckt. Entry 25 and Dckt. Entry 29).[17] First. the Respondent's ad hominem defense does not address the merits of the Petitioners fraud claim; it only appealed to the personal consideration of the district court. attacking the Petitioners character rather than his assertions. The Respondents' utilized the commonly used stratagem. by attorney(s). of arguing that American Moors. are "sovereign citizen". as their modus operandi. in pleading to personal contemplation. rather than to the logic and reason of the Petitioners claim, on its merits. The Respondents "based on the name under which Plaintiff did file a suit, and Plaintiff's general allegation of citizenship in the Society of the House of El, (Waqf), it is possible that the Plaintiff is attempting to base his FAC that he is exempt from federal law."[18] Second. the Respondent's affirmative defense is as follows: "Plaintiff fails to establish that he suffered an injury in fact." "Nor. has Mr. El established a concrete injury... At best Mr. El alleges a fear of losing property".[19] Here the Respondent's defense challenges whether the Petitioner suffered an injury in fact. and or a concrete injury. Third. the Respondent's defense asserted. "Plaintiff's claims should be dismissed because they are time barred."[20] The district court did not dismiss the Petitioner's claim. based on the affirmative defense as presented by the respondents. The Petitioner was prejudiced the Petitioner as the district judge dismissed his claim. based on the Respondents. responsive pleading. in support of their motion to dismiss, and not their affirmative defense, as stated in their 12(b)(6) motions.

The Respondent's, response / reply in support of motion to dismiss were filed on August 8th 2021 (Dckt. 44) and August 18th 2021 (Dckt. 50). The district court judge dismissed the Petitioner's claim in chambers on August 25th 2021. The district court, erroneously discerned that "neither Pernell El, nor the Society is the borrower on the loan at issues, or the owner of record of the property that secures the loan at issue in the FAC, so the lack standing to sue." (See Appendix B, page 5) The district court further discerns that the "defendants state that Pernell El is an alias for the buyer Gerrad Pernell Swahili and points out this doses not salvage the FAC because, the title of the complaint must name all parties Fed. R. Civ. 10(a) (See Appendix B, page 5). The Petitioner argued in his Opening Brief, that he was ambushed by Respondents new defense, and the district court reliance, on said new defense to dismiss the Petitioner's claim. In his Opening Brief, the Petitioner cited, *Automated Med. Labs.*

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[17] The defense filed a 12(b) motion (Dckt. En. 6) that was mooted, by the district judge (Dckt. En. 20)

[18] See Pernell Swahili El v. San Diego Unified School District, 22-5322, (2022) Supreme Court of the United States. (Wherein, the respondent, and their attorney utilized the same genocidal stratagem, in violation of International law: 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide) See also Dckt Entry 25, pg. 9

[19] Dckt. 25, pg. 15 / Dckt. 29, pg. 9 / Motion to Dismiss

[20] Dckt 25, pg. 17 -18, Dckt. 29, pg. 10 / Motion to Dismiss

v. Armour Pharm. Co., 629 F.2d 1118, 1122 (5th Cir. 1980) (citing Rule 8(c)); see also Ingraham, 808 F.2d at 1079 ("A defendant should not be permitted to 'lie behind a log' and ambush a plaintiff with an unexpected defense.") The petitioner claim was improperly dismissed at pre trial stage, on a 12(b)(6) motion. The district court's dismissal was inconsistent with federal rule 8(e), where pleadings must be construed to do justice. Thus, while one wishing to assert an affirmative defense has every opportunity to do so, it must be done at a time, and a manner, which is consistent with federal rules. The court and the opposing party must be timely advised of the intended defense. Id. at 1123. The Petitioner was not timely advised of the intended defense.

The Respondent's new argument in their reply response, in support of their motion to dismiss is as follows: "the Plaintiff is not the borrower on the loan at issues in the FAC". [21] The named Plaintiff lacks standing to bring the claim against Wells Fargo Bank Defendants. Plaintiff is not the borrower on the loans at issue in the FAC. nor is he owner for the subject property that secures the loans at issue in the FAC. (Dckt. Ent. 44, page 9) The new assertion erroneously relied upon at the district court contradicts the Respondent's initial assertions, and deprives the Petitioner of *fair notice*; wherein the Respondent initially asserted repeatedly, "Plaintiff and wife financed the purchase 299.150.00 mortgage loan from DHI Mortgage Company." "In April 2011 Plaintiff and his wife purchased a home in Murrieta. California from D.R. Horton. Plaintiff and his wife financed the purchase with 299.150.00 mortgage loan from DHI Mortgage Company. (Dckt Entr. 25-1. pg. 8. Further asserting that. "Mr. El is Gerrad Pernell Swahili. a borrower on the loan and the owner of record of the Subject Property." (Dckt. Ent. (25-1, pg. 9 and 10.) "Plaintiff and wife financed the purchase 299,150.00 mortgage loan from DHI Mortgage Company." See DT. 25, page 1 (line10 -14)

The Respondent argued that the Petitioners fraud claims are time barred. The defense was allowed to side step the Petitioner's fraud claim, at the district court and the appeals court, avoiding the invalid 2012 assignment "the Assignment"; void of the requisite power attorney, and the question presented, why a public notary, Lynn Maria Secick, was acting as the authorized agent for MERS. The Respondent, ad hominem argument is "Plaintiff's claims are all seemingly based on the conclusory "Show me the Note theory"' (See DT 25, page 13, line 12 -15). The district judge erroneously and prejudicially misrepresents the Petitioners claims, in his judgment, by falsely asserting, "The action arises out of a foreclosure sale of the property, located in Murrieta, California." (Appendix B, pg. 4) The district incorrectly cites *Perez v. Mortgage Elec. Registration Sys. 959 F .3d 334, 340 (9th Circuit)* to prove their preemptive foreclosure argument, (We follow the decisions of the California appellate courts in holding that California law does not permit preemptive actions to challenge a part's authority to pursue a foreclosure before a foreclosure has taken place." The preemptive foreclosure

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[21] Dckt, 44, pg. 4 / Dckt. 25, pg. 1 / Opening Brief, page

argument contention is false, as the Crux of the Petitioner's claim is fraud, which transpired in 2012 -2013, and discovered by the Petitioner in the year of 2020. The Petitioner never asserted, that this case commenced because of an attempted foreclosure in 2013. The Petitioner in his response in opposition argued that the April 28th 2021 assignment was void, and Bruce Rose and Carrington Mortgage LLC sent the Petitioner an intent to foreclose on June 9th 2021, however the case commenced on April 9th 2021.[22]

Lastly the Petitioner argued that fraud vitiated the HUD loan in 2013 (DOC # 2013 -0388149) in the amount of $ 88, 129.91 and the 2012 Assignments, and any subsequent assignment from thence, was void. "Obtaining an assignment through fraudulent means invalidates the assignment. Fraud destroys the validity of everything into which it enters it vitiates the most solemn contracts, documents and even judgment." *See Walker v. Rich, 79 Cal. App 139 (Cal. App. 1926).*

THE FRAUD

Wells Fargo Bank NA. committed fraud by self-assigning the 2012 corporate deed of assignment "the Assignment" to themselves. using a notary public. Lynn Maria Sevick as the authorized agent for Mortgage Electronic Registration System.[23] The Petitioner presented the district court with evidence. demonstrating that Lynn Maria Sevick. had in fact. notarized documents for Wells Fargo bank Na. in the past. Lastly. according to law. the assignment is further invalid. as there is no power of attorney. authorizing the public notary. the authority to assign any beneficial interest to Wells Fargo Bank NA. in the 2011 Deed of Trust (DOC. There was no power attorney affixed to the said assignment. rendering it invalid. In *Wells Fargo Bank v Farmers.* the court deduced that in order "(A) to have a proper assignment of a mortgage by an authorized agent. a power of attorney is necessary to demonstrate how the agent is vested with the authority to assign the mortgage." See *Wells Fargo Bank. N.A.. v Farmer 2008 NY Slip Op 50199(U) [18 Misc 3d 1124.* The *Farmers* case. like this case. the purported authorized agents Jose Burgos. and Lynn Maria Sevick. lacks the requisite power of attorney. that authorizes both individuals the authority to assign the beneficial interest in the deed of trust. " The assignment lack any power of attorney granted by Argent or Ameriquest to Jose Burgos to act as their agents. Real Property Law (RPL) § 254 states:

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[22] All parties were served, with an opportunity to wave the summons, on April 12th 2021. No party waived summons, therefore the Petitioner amended his complaint, and served all defendant within 90 days. (see dckt entry. 14, 15, 16, and 17)

[23] Dckt. Entry 11, paragraph 31 and 48.

> Power of attorney to assignee. The word "assign" or other words of assignment, when contained in an assignment of a mortgage and bond or mortgage and note, must be construed as having included in their meaning that the assignor does thereby make, constitute and appoint the assignee the true and lawful attorney, irrevocable, of the assignor, in the name of the assignor, or otherwise, but at the proper costs and charges of the assignee, to have, use and take all lawful ways and means for the recovery of the money and interest secured by the said mortgage and bond or mortgage and note, and in case of payment to discharge the same as fully as the assignor might or could do if the assignment were not made. Id.

According to the law, the two-page Corporate Assignment of Deed of Trust (DOC # 2012- 03808160), that Wells Fargo Bank NA, filed at the county clerk of Riverside County, is invalid, and the NOTICE OF ELECTION TO SELL UNDER DEED OF TRUST, sent by John Jaimes, representing Wells Fargo Bank NA was an inducement to fraud. "It is clear that plaintiff WELLS FARGO, with the invalid assignments of the instant mortgage and note from ARGENT, lacks standing to foreclose on the instant mortgage." Id. Properly, the Supreme Court of Kings County, conditionally ruled that Wells Fargo Bank NA, had to meet three criteria to renew application for an order. The last criteria being, " a copy of the power of attorney to the loan servicer and servicing agreement authorizing the affiant to act....Id

REVIEW The Court of Appeals did not review the Petitioners claim De novo

The Ninth Circuit did not review the Petitioner appeal de novo. "Pernell El appeal pro se from the district court judgment, dismissing his action alleging federal and state law claims" (Appendix C, pg. 10) The circuit judges, did not address the crux of the Petitioner claim of fraud. The circuit judges, prejudicially opinioned, "We do not consider matters not specifically raised in the opening brief, or arguments and allegations raised for the first time appeal. See Padgett v. Wright, 587. F. 3d 983, 985 n.2 (9th Cir. 2009)" (Appendix C, pg. 11). The Ninth Circuit misapplied the Padgett case, as that case dealt with Wright's (the defendant's) argument of qualified immunity that he asserted in his reply brief, however failed to argue in his opening brief. Holding, that Wright's belated argument in his reply brief.... does not remedy the problem. Id. Based on the Padgett ruling, it is easy to infer that the same logic should have been applied to this case, in so much as the Respondent's reply argument was accepted and relied upon at the district court. The court of appeals in a vague memorandum, do not identify, any of the Petitioners points, which were purportedly raised for the first time. Unlike the Padgett case, which went to trial, the Petitioners case was dismissed at

the pre trial stage, warranting a review de novo. The circuit judges did not address, the *Issues on Appeal* (Opening Brief, page 3). One of the seven questions presented, that was not addressed "is fair notice required under rule 8(c) of an affirmative defense? Did the district court error in ruling on the new argument presented by the Appellee, in their response pleading that "Pernell El is not the borrower on the DHI loan, without giving the Appellant fair notice" (Opening Brief, pg. 3)

The Ninth Circuits unpublished opinion is as follows: "The district court properly dismissed El's action because failed to demonstrate that he has standing to pursue these claims. See Smelt 447 F. 3d at 682 -83 (element of article III standing require that the plaintiff assert his own legal right and interest)." (Appendix C, pg. 10) The Petitioner argued in his Opening Brief, that the district court did not address the issue of Article III Standing, in realtione to the Respondents' affirmative defense, in their 12(b)(6) motion's, and or whether or not the claim was time barred, because the Appellant proved article III, standing, and the claim was not time barred." (Opening Brief, page 11-12)[24] The Respondents affirmative defense was the Petitioner did not suffer an injury in fact.

This is a straightforward case. in which a plaintiff suffered a redressable injury at the hands of the defendant—Article III standing is effectively a non-issue here. Article III standard is jurisdictional issue. which was not resolved in the early stages of the pleadings. at the district court. For a dispute to be within the power (subject matter jurisdiction) of the federal court. the Plaintiff must have standing – insomuch as. a plaintiff must have alleged a sufficient interest in the dispute. *Luian v. Defenders of Wildlife. 504 U.S. 555. 559 (1992)* "This irreducible constitutional minimum of standing has three elements: the plaintiff has suffered a concrete injury: (2) that injury is traceable to the actions of the defendants: and it must be likely – not merely speculative – that an injury would be redressed by a favorable decision. *Id at 561.* This Petition presents the issue. of loosely using the term " standing" to decide the right to bring an action. The court of appeals and district court's rulings were non specific. that did not address the merits of the claim. "the practice of using the term 'standing' loosely to describe the right to bring a particular cause of action 'leads' to much confusion when it is necessary to distinguish between 'standing' in its most technical sense and the concept of the real party in interest under Fed. R. Civ. P. 17(a)". *Hoskins v. High Gear Repair. Inc.. No 11-1190. U.S. Dist. Lexis 110852.* The Petitioner. satisfied the irreducible constitutional standard of Article III. insomuch as he suffered a redressable injury. which can be traced back to Wells Fargo Bank NA. John Jaimes. and Lynn Maria Sevick fraudulent misrepresentation. The Petitioners reliance. as stated in his FAC. was that he was induced to sign HUD loan in 2013 (DOC # 2013 -0388149) in the amount of $ 88. 129.91. creating an encumbrance on the said private property. The district court and the Ninth Circuit. without specification incorrectly dismissed the Petitioner's claim, on the false notion that the

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[24] Dckt. Entry, 35, pg. 10 and 11

Petitioner did not assert his private right, insomuch as, relying on the Respondent's new argument, that the Petitioner is not the signatory of the DHI Mortgage agreement; and therefore, is not the Real Party In Interest. (See opening Brief, page 20)

The Petitioner argued in his Opening brief, and case law agrees with the Petitioner, that no action at a district court may be dismissed under Federal Rule 17(3), without affording the real party in interest to ratify. Federal Rules and Civil procedures 17(3), states "the Court MAY NOT dismiss an action for failure to prosecute in the name of the real party in interest, until after an objection, and reasonable time has been allowed for the real party of interest to ratify. (Opening Brief, page 20 and 21). Under Rule 17, even if he district court deemed that the Petitioner incorrectly filed the suit, the defense must object, and the Petitioner, should have been given ample time to ratify. [25] The Respondent never objected, nor did the district court instruct the Petitioner to ratify. This Court should infer, by the Respondent's actions, that the defense intent was to ambush the Petitioner, and have the district court rely on said ambush. (See Opening Brief, page 18 and 19) The district court cited Federal Rule 10(a), as a rational for dismissing the Petitioner's claim, stating, the caption of the complaint must name all parties. All parties were named in the caption, if the district court deemed, the parties were incorrectly named, than Rule 17(3) should have been applied. However, that argument fails as well, as the Petitioner is listed as the Plaintiff on the FAC. Dckt. Entry 11, paragraph 4)

In the Byrd case, the issue of the real party of interest was resolved, through the interpretation of Rule 17. Stating, civ. R. 17(A) says that "[e]very action shall be prosecuted in the name of the real party in interest. *** No action shall be dismissed on the ground it is not prosecuted in the name of the real party in interest until after reasonable time allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. Id. Further stating that, "such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." Id The Respondents new argument, scantly purported that the Petitioner lacked standing to bring the action because he not the signatory on the DHI loan, was inappropriate at that time.

It appears, that the Respondent attempts to argue that the Petitioner lacks standing, "not the real party in interest", because he transferred the interest, in said property, in a Moslem trust. There are two cases: *White v. J. P. Morgan Chase Bank, NA 521 F Appx 425, 428, 531 (6th Circuit 2013)* U.S and *Neurosurgical Inc. v. City of Chicago* that illustrate how the principle applies, when the defendant attempts to shift from a lack of Article III standing argument, to the no longer a real party

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[25] The district court dismissed the Petitioner claim before the scheduling conference, which would have been the appropriate time to amend, join, and object. The Petitioner was denied the opportunity to be heard.

in interest argument. In *Neurosurgical Inc,* the defendant claimed that the asset-purchase agreement transferred the very asset that the injured plaintiff brought suit upon, and that court explained, the defendant wrongfully, "attempt[ed] to shift the burden to the plaintiff " to the rule 17 affirmative defense, however the defendant failed to demonstrate that what was transferred "included the assets assigned." The defendants' did not cite Rule 17, as an affirmative defense, however their 12(b)(6) motion was prejudicially granted. Even if the defendants' cited Rule 17 with specificity, as a affirmative defense, the Petitioner would survive a properly plead 12(b)(6) or 12(b)(1) attack, as the Petitioner's standing is not implicated by a purported assignment, and or procedurally incorrectly filling the suit, without affording him the opportunity to cure. Quoting *White,* in regards to the Petitioners right to recover, is "not one of Article III Standing." Id at 29.

At the federal level, subject matter jurisdiction has to be addressed by the district court, properly raised. The district court did not address the issues of the subject matter jurisdiction. A 12(b)(1) motion properly brought challenges the ability for federal courts to hear cases. Under Byrd, "Civ. Rule. 17 was not applicable unless the Plaintiff had standing to invoke the jurisdiction of the court in the first place, either in an individual or representative capacity, with some real interest in the subject matter." The dismissal of the Petitioner's claim, was prejudicial, by denying him the opportunity to respond to the new argument of the Respondents, and or correct any noted deficiencies in his pleading. Further, the record does not indicate that the Respondents objected, to the name in which, the Petitioner filed his claim under. Instead of objecting, and allowing the Petitioner to make the necessary ratifications, if any, the Respondents ambushed the Petitioner, with a new improperly brought affirmative defense, which was contrary to their initial 12(b)(6) pleading. Federal courts have held, that a plaintiff must be given fair notice of a defense. Citing *Canfora,* the court deduced, in the Byrd case, "Sua sponte dismissals ordinarily prejudice appellants, because it deny any opportunities to respond to the alleged insufficiencies." Id at 17. *MBNA Am. Bank, N. A v. Canfora, 9th district No. 23588, 2007 – Ohio - 4137 2007* Citing, *Ericsson Inc. v. Intellectual Ventures I LLC. Case # 17 -1521 (Fed Cir. August 27, 2018)* "Patent Trial and Appeal Board (PTAB) is entitled to strike arguments improperly raised for the first time in a reply, but the expansion of previously argued rationale is not a new argument." In this case, the Respondents did not expand on a new argument, they changed it the pre trial stage. See also *Automated Med. Labs. v. Armour Pharm. Co., 629 F.2d 1118, 1122 (5th Cir. 1980) (citing Rule 8(c)); see also Ingraham, 808 F.2d at 1079* ("A defendant should not be permitted to 'lie behind a log' and ambush a plaintiff with an unexpected defense.") Thus, while one wishing to assert an affirmative defense has every opportunity to do so, it must be done at a time, and a manner, which is consistent with federal rules. The court and the opposing party must be timely advised of the intended defense. Id. at 1123

REASONS FOR GRANTING THE WRIT CERTIORARI

1. This petition presents the standard of evaluating standing under article III. Article III of the Constitution limits the authority of the federal courts: they decide "Cases" and "Controversies." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). For a dispute to be within the power (the subject-matter jurisdiction) of a federal court the plaintiff must have standing—that is, the plaintiff must have alleged a sufficient interest in the dispute. This "irreducible constitutional minimum" of standing has three elements: (1) the plaintiff has suffered a concrete injury; (2) that injury is fairly traceable to actions of the defendant; and (3) it must be likely—not merely speculative—that the injury will be redressed by a favorable decision. *Id.* at 560–61. The plaintiff bears the burden to establish standing with the appropriate degree of evidence at each successive stage of litigation. *Id.* at 561. At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice. *Id.* The Petitioner satisfied the irreducible standard under article III, at the pleading stages.

In determining "injury" for Article III standing purposes is a fact-specific inquiry. "Typically ... the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted." *Allen* v. *Wright,* 468 U. S., at 752. Neither the district court, nor the 9th Circuit judicially examined the complaint, or the allegations.

The question of whether or not the petitioner suffered a concrete injury is a non-issue, as the Petitioner alleged that Wells Fargo Bank NA, fraudulently procured the Petitioners signature by fraud, creating an encumbrance on the property, in the amount of $ 88,129.91. [26] This Court, in determining article III standing, in Transunion v Ramirez, cited *Spokeo, Inc. v. Robins, 578 U. S. 330, 340,* stated, "That inquiry asks whether plaintiffs have identified a close historical or common-law analogue for their asserted injury." Physical or monetary harms readily qualify as concrete injuries under Article III, and various intangible harms—like reputational harms—can also be concrete. Ibid. The Petitioner cited, in his Memorandum of Opposition to Respondents 12(b)(6) Motion to dismiss, *Transunion v Ramirez. No. 20-297, 2021WL, 2599472, (2021)* stating that, "an injury can be tangible or intangible"

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[26] DktEntry. 11 - pg. 18 paragraph 47, pg.19, paragraph 48

Further stating, "each class member established his or her private right" and that [t]he plaintiffs have sufficient injury to sue in federal court."[27]

The question of whether or not the Petitioner is real party at interest, was / is a non-issue. The district courts supposed that, "The court will not analyze standing under the assumption that Pernell El is Gerrad Pernell Swahili" (Appendix B, pg. 6) The district judge did not have to analyze, as it was mentioned in the FAC, on multiple occasions. "On the date of April 12th 2013, notary Julie Jones (commissioner number 200415) procured the signatures of Pernell El ex relatione GERRAD PERNELL SWAHILI and Fatima Swahili El ex realtione FATIMA SWAHILI on the Deed of Trust (Exhibit A2) and Partial Promissory Note (Exhibit A3).[28] The real party in interest was not an issue, which was argued in the Respondent's 12(b)(6) motions, their motions affirmed, the were aware of who the signatory of 2011 Deed of Trust was. The Respondent's argument in their reply brief is as follows, "the Society is not a real party in interest." (Wells Fargo et al, Reply Brief, pg. 20) The FAC list Pernell El as a party, and he is a real party in interest. (See Dckt. Entry 11, paragraph 4, page 5 of 22, FAC)

The appeals court citation of *Smelt v. county of Orange, 447 F. 3d 673 (9th Cir. 2006)*, to dismiss the Petitioner's claim, was incorrect. Smelt, dealt with challenging the state constitutionality, of marriage codes "laws". Id at 8. The Defendant contended that Plaintiffs do not have standing to challenge section 2 of Doma, a state statue. The 9th circuit used the three tier prong, stating the "Plaintiff's have not shown, what 'injury in fact' they have sufferred, as a result of the state statute." Id No analysis was drawn, between the Petitioner's alleged injury , and the Smelts allegation of injury. The appeals court's dismissal was vague, and it ignored the Petitioner's injury allegations, which according Ramirez, can be tangible or intangible.

2. This petition presents the review standard, under Morin, wherein it states, granting of a motion to dismiss is subject to De Novo standards. See *Morin v. Caire, 77 F.3d 116, 120 (5th Cir. 1996).* The Ninth Circuit, in its unpublished opinion did not review the record De Novo. The Ninth Circuit has departed from the accepted course of judicial proceedings by not reviewing this case, under the De Novo standards, of an appealable 12(b)(6) Motion to dismiss. The Ninth Circuit,

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[27] Dckt. Entry 35 – pg. 11

[28] Dckt. Enrty 11, paragraph 7 (FAC)

ignored the crux of Petitioner's claim of fraud, as evidenced by its ruling, stating, "Pernell El, appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims" (Appendix C, page 10). Properly, all claims must be reviewed.

3. This Petition presents the standard of review of a 12(b) 6 Motion to Dismiss under *Twombly,* wherein " a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 127 S.C.t 1955, 167 L.Ed2d 929.* Under this traditional rule, when "considering a Fed.R.Civ.P. 12(b)(6) motion to dismiss, '[t]he district court must construe the complaint in a light most favorable to the plaintiff, accept all of the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief.'" *Amadasu v. The Christ Hosp., 514 F.3d 504, 506 (6th Cir. 2008), quoting Columbia Natural Res., Inc. v. Tatum, 58 F.3d 1101, 1109 (6th Cir. 1995).* In Twombly, the Supreme Court emphasized that even though a complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Twombly, 127 S.Ct. at 1964-65 (internal citation and quotation marks omitted).* The Petitioner's FAC was not devoid of the factual allegations, as required to meet the threshold pleading standards under 12(b)(6) motion. The Respondent's affirmative defense, of the lack of a concrete injury and time barred fraud claims, does not disprove the Petitioner's claims, in so much as the district did not rely on the Respondent's affirmative defense, for dismissal of the Petitioner's claim; erroneously relying on the Respondents, reply and response.

4. The Petitioner presents important property rights asserted in reliance on federal treaties. This Court stated, that we grant Certiorari because "the cases involve important rights asserted in reliance of a federal treaty obligations." Citing, *Kolovrat v. Oregon 366 U.S. 187 (1961).* The Petitioner invoked his treaty secured rights to reversion of Estate, pursuant to article 22 of the Treaty of Peace and Friendship, between the United States of North America and the Empire of Morocco (1836). Article 22, being the TRUST clause, of said treaty, the Petitioner, therefore demanding his right to heirship over said parcel of land, with Per the treaty, the Petitioner introduced in the record, via judicial notice Allodial Aboriginal Clear Perfect Title and Conveyance / Gnosis of the

Moabite Family Trust / Quit Claim Deed.[29] That Plaintiff argued that neither Respondent had a valid assignment, and or had a void assignment, therefore, possessed no beneficial interest, in the original Deed of Trust, signed by the Petitioner and DHI Mortgage. The only agreement signed between the Petitioner and the Respondents was procured through fraudulent misrepresentation.[30] We hold that the 1881 treaty, entitle the petitioners to inherit property located in Oregon on the same basis of the next of kin, and these rights have not been taken away or impaired by the monetary policies of Yuglosovia."Id. The district court and appeals court did not disagree, with the Petitioner's invoking of his treaty rights.

5. The Petitioner presents a common law standard of the principle of *Lis Pendens*, wherein Carrington Mortgage LLC, and Bruce Rose have no standing before the court, in relatione to this matter. The district court deviated from the principles of *lis Pendens*, to the extent that the universal principle behind *lis penden*, is unchangeable, it is best expressed in the maxim of *"pendnete lite nihil inonovature*, which states, "nothing new should be introduced during the pendency of a litigation" *See* Supreme *General Films Exchange Ltd. v. H.H. Maharaja Sir Brijnath Singhji Deo AIR 1975 SC 1810 : (1975) 2 SCC 530.* [31] Despite the Petitioner's objection, the district court allowed the Respondents to collectively introduce a void 2021 assignment of a Deed of Trust, filed as (DOC # 2021- 0264133) at County of Riverside; from Wells Fargo Bank NA to Wilmington Savings Fund Society, FSB, as Trustee of StanWich Mortgage Trust.[32] The principle of *lis Penden* is applicable, as the case commenced on April 12th 2021, and the purported assignment, transpired on the date of April 28th, 2021. The Petitioner argued that the assignment (DOC # 2021- 0264133) is void. In Byrd (2008) the plaintiff, Wells Fargo Bank NA, offered no evidence that it owned the mortgage or note before the case was filed, therefore it was concluded that the were not entitled to judgment. Despite Wells Fargo Bank Na, being the defendant in this case, the principles are still applicable. "If plaintiff has offered no evidence that it owned the note and mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law." *Wells Fargo Bank, v. Byrd, 178 Ohio App. 3d 28, 2008-Ohio-4603, 897N.E.2d 722(2008)* Further citing, " A party lacks standing to invoke the jurisdiction of the court, unless he has, in an individual or representative capacity, some real interest in the subject matter of the

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[29] Dckt Entry. 22 / RJN /Exhibit I1 / pg. 77-78 - Canon 1930 - Any claimed ownership, conveyance lien or other fictional over any form within a Divine Trust that are not in accordance with these canon is a fraud and gross injury to Devine Creator and therefore automatically null and void from the beginning.

[30] Dckt. Entry 22 / RJN Exhibit A2 and A3 / DOC 2013-0388149

[31] Wells Fargo Bank et al, blatant disregard for law, is further illustrated in case Pernell El vs Wells Fargo Bank et al 22- 05940-AB MAAX, wherein the defendant, filled DOC 2022-028324, despite this pending litigation.

[32] Dckt. Entry 36 and 46 (Brief in opposition to RJN)

action. Id. The Petitioner argued that Carrington Mortgage and Bruce Rose have no standing, via their void assignment. [33]

6. The courts of appeals, denied the Petitioner of procedural due process in its opinion, by denying him opportunity to be heard, in variance to the standards under Ninth Circuit Rule 34(a)(2), wherein it states, "oral arguments **MUST** be allowed, in every case unless the panel of three judges agrees after the examination of the briefs and record, it is not needed for one of the following three reasons." Accordingly, the law law states "Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. *Earle v McVeigh, 91 US 503, 23 L Ed 398.*

CONCLUSION

The lower courts need proper guidance in the delineation between Article III Standing and Real Party in Interest, as standardized in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). Article III Standing and, the question of whether the Petitioner is the real party in interest, is a non-issue. The district court needs proper guidance in interpreting the standard of dismissal, under Twombly. In Twombly, the Supreme Court emphasized that even though a complaint need not contain "detailed" factual allegations, its "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Twombly, 127 S.Ct. at 1964-65 (internal citation and quotation marks omitted).* Based on the foregoing, the Plaintiff is entitled to relief.

Date December 2, 2022

Pernell El / M.C

Pro Per

[33] Dckt. Entry 49, pg. 9 and 11

In the
Supreme Court of United States Supreme Court

Pernell El

v.

Wells Fargo Bank et al

Certificate of Compliance

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains less than 9000 words excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 21st 2022

Pernell El / Pro per