

No. 23-391

In The
SUPREME COURT of the UNITED STATES

ALEXANDER MOSKOVITS,

Petitioner,

v.

MTGLQ INVESTORS, L.P.,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
FLORIDA SUPREME COURT**

**RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

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*Application for Admission Pending

QUESTION PRESENTED

Whether the appellate courts below erred in dismissing Petitioner's appeal of three non-final orders for lack of jurisdiction under state law.

PARTIES TO THE PROCEEDING

Petitioner Alexander Moskovits was the Defendant in the original proceedings in the Eleventh Judicial Circuit of Florida in and for Miami-Dade County. Petitioner is appearing in proper person before this Court.

Respondent MTGLQ INVESTORS, L.P, is the Plaintiff below. Respondent is a New York Limited Partnership registered to do business in the State of Florida. Its General Partner is MLQ, L.L.C, a New York Limited Liability Company. The principals of MLQ, L.L.C. are individuals: Manju Madhavan, Julie Abraham Hausen, and Maheshwar Saireddy. Respondent has no parent company or subsidiaries and is not publicly traded.

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STATEMENT OF THE CASE

After many years of protracted litigation, the trial court for Miami-Dade County, Florida entered a final judgment directing the foreclosure and sale of property in which Petitioner claims an interest. That judgment was rendered on August 14, 2019. Petitioner challenged that judgment through multiple unsuccessful rehearings and appeals, none of which are at issue in this proceeding.

Rather, this Petition concerns a series of post-judgment motions intended to thwart the sale of the property in February of this year. Those motions were denied by the trial court, resulting in three orders: (1) an order denying Petitioner's motion to set aside the earlier final judgment; (2) an order scheduling the foreclosure sale; and (3) an order denying Petitioner's motion to stay the sale.

Petitioner appealed to the Florida Third District Court of Appeal. On March 14, 2023, the District Court dismissed the appeal for lack of jurisdiction following briefing on that question. The District Court determined that the orders appealed from were all non-final decrees. Because it lacked jurisdiction over the appeal, the District Court did not address or rule on any of the substantive issues raised by the Petitioner.

Petitioner filed a motion for rehearing which the District Court denied on May 10, 2023.

Petitioner then filed a timely application for discretionary review with the Florida Supreme Court.

On June 12, 2023, the Florida Supreme Court dismissed the Petition for lack of jurisdiction as the District Court order was “an unelaborated decision” issued without an opinion or explanation.

Petitioner sought timely review before this Court on August 22, 2023.

There is effectively nothing to review in this Court and no jurisdiction to do so. The order appealed from merely determined that the Third District Court of Appeal lacked jurisdiction over several non-final orders entered by the trial court. Petitioner does not claim that the jurisdictional decision was in error or that the decision conflicts with any case, statute or Federal constitutional right. Instead, Petitioner merely rehashes the same substantive arguments concerning standing that were rejected prior to entry of the final judgment in 2019.

Petitioner’s argument is misdirected because it does not address the jurisdictional issue. The argument also fails to provide any justification for this Court to review utterly mundane, non-final procedural orders with no discernible public policy or constitutional implications.

REASONS FOR DENYING THE WRIT

I. The decision below does not conflict with any decision of this Court nor is a Federal or Constitutional Question presented.

Petitioner's appeal to the Florida Third District Court of Appeal failed for lack of jurisdiction under state law as the orders appealed from were not final. Rather than address the issue actually before the state court, Petitioner asks this Court to review the merits of a previous trial court decision based on an alleged failure to observe stare decisis under state law. (Pet. at 19-23).

It is obvious that the Petitioner does not allege a Federal Question of any kind nor does he assert that the decision below conflicts with any decision of this Court. There is no suggestion that the jurisdictional decision below implicates any constitutional rights under anybody's constitution.

The jurisdiction of this Court to review state court decisions is, of course, limited to disputes involving constitutional questions or where a treaty or federal law is implicated. *See*, 28 U.S.C.A. §1257. Nothing of the sort is alleged here.

In addition to the lack of any Federal or constitutional issue, there is also a lack of a final judgment or final order in this case. The state District Court of Appeal declined jurisdiction for this very reason: Petitioner was attempting to appeal from non-

final orders. This Court lacks jurisdiction over this sort of interlocutory, non-final decree:

Consistent with the relevant jurisdictional statute, 28 U.S.C. § 1257, the Court's jurisdiction to review a state-court decision is generally limited to a final judgment rendered by the highest court of the State in which decision may be had. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 476–477, 95 S.Ct. 1029, 1036, 43 L.Ed.2d 328 (1975). In general, the final-judgment rule has been interpreted “to preclude reviewability ... where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State.” *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092 (1945).

Flynt v. Ohio, 451 U.S. 619, 620, 101 S. Ct. 1958, 1959, 68 L. Ed. 2d 489 (1981)

Even if this Court had jurisdiction to consider this Petition - which it does not - there is absolutely no reason why this Court should exercise its discretion to hear this case. *See, generally, Hammerstein v. Superior Ct. of California*, 341 U.S. 491, 492, 71 S. Ct. 820, 821, 95 L. Ed. 1135 (1951) (“The presence of jurisdiction upon petition for writ of certiorari does not, of course, determine the exercise of that jurisdiction, for the issuance of the writ is

discretionary.”). This case does not present any constitutional claims or issues of great public importance to the nation. Rather, it involves a misguided attempt to challenge non-final state court orders concerning the foreclosure of real property following an undisputed default.

II. The state appellate courts correctly determined that they lacked jurisdiction to consider an appeal from non-final state court orders.

The Third District Court of Appeals dismissed Petitioner’s appeal because he sought review of non-final orders. As a general matter, Florida law does not permit review of non-final orders. *See, Keck v. Eminisor*, 104 So.3d 359, 363–64 (Fla. 2012) (“Generally, an appellate court may not review interlocutory orders unless the order falls within the ambit of non-final orders appealable to a district court as set forth in Florida Rule of Appellate Procedure 9.130.”). Petitioner did not identify any exception under the Rule which would justify jurisdiction over the subject non-final orders. *See, generally, Hinote v. Ford Motor Co.*, 958 So.2d 1009, 1011 (Fla. 1st DCA 2007) (“[W]here it remains unclear whether the order is intended to be final or nonfinal, it is proper to dismiss the appeal as premature because the order does not contain sufficient language of finality to constitute a final order.”).

Rather than return to the trial court to obtain a final order capable of being appealed, Petitioner sought review in the Florida Supreme Court. Discretionary review was denied because the Third

District decision amounted to a per curiam decision without an opinion. In the words of the Supreme Court, the dismissal below was an “unelaborated decision” which precludes review. The Supreme Court’s order cited numerous other decisions denying review for exactly the same reason. Among those was the recent decision of *Wheeler v. State*, 296 So.3d 895, 896 (Fla. 2020) where the Court observed that it “has long held that it lacks jurisdiction to review unelaborated orders or opinions from the district courts of appeal that do not expressly address a question of law.”

Again, Petitioner’s remedy was to obtain a final judgment from the trial Court so that a reviewing court would have jurisdiction to make a decision on the merits. Again, Petitioner did not take advantage of the legal avenues open to him. Instead, he sought review in this Court. Furthermore, he seeks review of what he perceives to be the merits of his case instead of addressing the only issue considered by the state appellate courts: jurisdiction to consider an appeal.

Petitioner does not assert that the Third District Court of Appeal was mistaken in concluding that it lacked jurisdiction over this appeal. Likewise, there is no argument that the Florida Supreme Court misapplied its own law in denying review.

There is no basis for this Court to assume jurisdiction and the Petition should be summarily denied.

CONCLUSION

This case concerns three non-final state court orders addressing various procedural and logistical issues having to do with a mortgage foreclosure. Petitioner's appeal of those non-final orders failed because the appellate courts lacked jurisdiction over them under state law. The Petition does not challenge that decision or suggest that the appellate court or the Florida Supreme Court erred in finding a lack of jurisdiction.

The Petition lacks merit because the state court non-final orders do not involve any Federal or constitutional question and do not concern any matter of public importance which would warrant the attention of this Court.

Respectfully Submitted,

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