8/23/2023

No 23-428

ORIGINAL

IN THE
Supreme Court of the United States

CHINONYEREM OSUAGWU,

Petitioner,

v.

HOME POINT FINANCIAL CORPORATION, ET AL,

Respondents,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Chinonyerem Osuagwu
245 North Main Street, #299
New City, NY 10956
(845) 893-9353
cobosmd@msn.com

Pro Se Petitioner

QUESTIONS PRESENTED

1. Did the State Court violate the petitioner's *Fourteenth Amendment* right when it empowered one of the respondents to sign his (the petitioner's) name and signature to *bona fide* legal documents, despite his vehement protestation, and absent legitimate *Power of Attorney,* and by this means, enabled deprivation of property, as well as the endangerment of his liberty?

2. Are the respondents liable, under 26 U.S.C. § 7434, for the injury suffered by the petitioner, when they sold his property, in defiance of a pending motion to stay the sale of said property – pursuant to New York Civil Practice Laws & Rules § 5519 (c) , and thereafter filed Form 1099 with the IRS, indicating taxable income to the petitioner, but failed to remit the income to him?

3. In light of the *Decision* of the New York Court of Appeals in *Aybar v. Aybar,* 2021, N.Y. Slip Op 05393, is "Complete Diversity," as mandated by the Second Circuit, practical as a determinant of federal jurisdiction in multi-party cases originating in the state of New York?

PARTIES TO THE PROCEEDING

The sole petitioner here is Chinonyerem Osuagwu, hereinafter referred to as "the petitioner."

The respondents are Home Point Financial Corporation; Home Point Capital, Inc.;[1] Amtrust Title Insurance Company; Amtrust Financial Services, Inc.; Marianne Gonzalez; Phyllis Simon; Arvind Galabaya; Leaticia Osuagwu (or Asuzu); Thomas Amadeo and Yanira Amadeo.

---

[1]Home Point Capital, Inc. was acquired by, or merged with, Mr. Cooper Group, Inc. ("Mr Cooper") on or about August 1, 2023, and as such, the former has ceased to exist as a corporate entity. Pursuant to the Michigan Business Corporation Act 284 of 1972, § 450.1736, Mr Cooper (which was fully aware of the pending action prior to the acquisition or merger) automatically assumes the role of Home Point Capital, Inc. in this action. Thus far, Mr Cooper has not moved to substitute for Home Point Capital, Inc., pursuant to Rule 35 of the Court. If it fails to do so, by the time this petition is placed on the docket, the petitioner will file a *Motion to Substitute.* Meanwhile, Home Point Financial Corporation, now Mr Cooper's subsidiary, continues to operate as a separate corporate entity.

RELATED PROCEEDINGS

New York Supreme Court, Ninth District:

Leaticia Osuagwu v. Chinonyerem Osuagwu, 036070/2020, *Judgement of Divorce,* entered on February 7, 2022.[2]

United States District Court for the Southern District of New York:

Chinonyerem Osuagwu v. Home Point Financial, et al, 7:22 –CV - 03839 (CS), final *Order* entered on June 27, 2022.

United States Court of Appeals for the Second Circuit:

Chinonyerem Osuagwu v. Home Point Financial, et al, 22-1403, *Order* on *Petition for Rehearing,* entered on June 27, 2023.

---

[2]While rulings issued in the other related proceedings named here are included as *Appendices* to this petition, the *Judgement of Divorce* of the State Court, is not included, because, thus far it has not been presented in this matter (only referenced), and therefore was not reviewed by either the District Court or the Second Circuit, prior to issuing their orders.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution and Statutes

Other Authorities

OPINIONS BELOW

Order by Second Circuit denying *Petition for Rehearing and Hearing En Banc* (1a) is unpublished. *Summary Order* of Second Circuit (3a) is unpublished. Final *Order* of District Court (18a) is unpublished. *Order* of District Court denying *Motion for Reconsideration and for Leave to Amend Complaint* (20a) is unpublished. *Order* of *Dismissal* of District Court (22a) is published.

JURISDICTION

The Second Circuit entered its *Summary Order* on May 10, 2023, and denied petitioner's *Petition for Rehearing and Hearing En Banc* on June 27, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Article III, Section 2 of the United States Constitution, provides in part, "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States... to controversies between citizens of different states..."

Article VI, Clause 2 of the United States Constitution, provides, in part, that the "Constitution, and the laws of the United States ... shall be the supreme law of the land; and the judges in every state shall be bound thereby..."

The Fourteenth Amendment, Section 1 of the United States Constitution, provides in part: "...No State shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws."

28 U.S.C. §1332, holds that:

> "The district courts shall have original jurisdiction of all civil actions where the matter... between (1) citizens of different states; (2) citizens of a State and citizens of a foreign state..., (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States ... a corporation shall be deemed to be a citizen... of the State or

foreign state where it has its principal place of business..."

26 U.S.C. § 7434 (c)(2), provides that "[i]f any person willfully files a fraudulent information return, with respect to payment purported to be made to any other person, such other person may bring civil action for damages against the person so filing such return."

26 U.S.C, §104 (a) (2), permits a taxpayer to exclude from gross income, "... the amount of any damages ... received (whether by suit or agreement...) on account of personal injuries or physical injuries."

26 U.S.C. § 7201, holds that any person, upon conviction for willfully attempt to evade tax shall be fined and imprisoned for up to 5 years or both.

STATEMENT OF THE CASE

I. Introduction

While the U.S. Constitution does not explicitly define the legal meaning of a person's signature or name on *bona fide* legal documents, this meaning can be inferred from the *Forgery* statutes of the various state, each of which

attaches very harsh penalties to its violation. For example, under Penal Code, §§ 170.10 and 20.00 of New York – the jurisdiction from where this matter originates, *Forgery* is a felony crime, punishable by up to 7 years in prison.

The *Fourteenth Amendment* was intended to expand the scope of the Constitution's protection of individual liberties by, among other things, placing limits on states' power, especially when such power threatens the civil rights of the individual. In this petition, the petitioner, *inter alia*, asks this Court to take a stand on whether the civil rights, which the *Fourteenth Amendment* sought to protect, extends to the legal use of a person's name and signature, especially when such use is made, on court order, contrary to the consent of the owner of the signature and name, and results in or enables deprivation of property and a threat to liberty of the latter. The District Court and the Second Circuit in their various rulings so far, seem reluctant to take a stand on this question, perhaps, having determined that the issues involved are beyond their purview, and hence pleading "lack of jurisdiction" and other reasons, in effect ceded the task to this

Court, in deference to Rule 10 (c) of the Court.

In addition to the foregoing, it is imperative that the Court addresses what it means to violate judicial procedure when such violation was enabled by unconstitutional court order and inevitably violates the constitutional rights of a person; that the Court determine if procedural due process is denied a litigant when the presiding judge, *sua sponte,* directs the named defendants in a properly filed and served complaint not to answer the complaint and dismisses it, without notice to the litigant or affording him the opportunity for a responsive pleading; that the Court resolve a conflict between the rulings of the Second Circuit and a decision of the New York Court of Appeals – the highest court in the state, on the subject matter of federal *Diversity Jurisdiction* and *Younger Abstention* doctrine. And so forth.

Inevitably, as the facts of this case are considered, the Court will come to the conclusion that the "error" of the Second Circuit in affirming the ruling of the District Court, is not merely a misinterpretation of law, but the egregious disregard of law that puts the

very meaning of the constitution in question. The proper resolution of the questions raised in this petition is of great practical importance.

II. Legal Background

The gravamen of the petitioner's *Complaint* in the District Court was a personal injury claim, pursuant to 26 U.S.C. § 7434(c)(2), cited on page 3, *supra.* Fed. R. Civ. P., 9(b), provides that, "In alleging fraud ... a party must state with particularity the circumstance constituting fraud..."

Article III, Section 2 of the Constitution and 28 U.S.C. § 1332, cited respectively on pages 1 & 3, *supra,* mandate that federal courts have jurisdiction in cases involving citizens of different states – the *Diversity Jurisdiction* provision.

The *Younger Abstention* doctrine *("Younger") which* grew out of *Younger v. Harris*, 401 U.S. 37 (1971), instructs federal courts to refrain from hearing constitutional challenges to state action when federal action would be regarded as improper intrusion on the state's authority to enforce its laws in its own courts. However, this Court also

defined three exceptions to *Younger*, enjoining that a federal court may review a state court proceeding when certain extraordinary circumstances exist that involve traditional considerations of equity jurisprudence: (1) bad faith and harassment, (2) patently unconstitutional statutes and (3) lack of adequate state forum. On the latter especially, this Court has repeatedly validated exception to *Younger*. In *Gibson v. Berryhill*, 411 U.S. 564 (1973) *("Gibson")*, for example, the Court found that federal intervention is appropriate under the *lack of adequate state forum* exception.

As with *Younger*, the rationale behind the *Rooker-Feldman* doctrine *("Rooker-Feldman")* was to prevent lower federal courts from hearing direct appeals of *final* state court decisions, a right, statutorily reserved for this Court, pursuant to 28 U.S.C. § 1257. In like manner, *Rooker-Feldman* does not impose a total bar to lower court jurisdiction in all cases deriving from state court cases. In *Exxon Mobil Corp v. Saudi Basic Indus. Corp*, 544 U.S. 280, 292 (2005) *("Éxxon Mobil")*, for example, this Court clarified that

not all actions dealing with the same or related questions are barred in federal court, instead, "it must retain an independent claim even if along the way, the claimant challenges or denies some conclusion reached by the state court." *Id*, at 293 (quoting *GASH Assoc. v. Rosemont*,995, F.2d, 726, 728 (7th Cir. 1993).

Prior to hearing the petitioner's appeal, the Second Circuit had overturned the dismissal of cases by district courts within its jurisdiction, which had been erroneously predicated on *Rooker-Feldman,* especially in cases where the defendants or, and their attorneys had caused personal injury to plaintiffs through acts of litigation misconduct or injurious actions, performed, not pursuant to the orders of the state court, but merely ratified by the state court, after the fact, rather than being punished or sanctioned. For example, in *Cho v. City of New York,* No. 18-337 (2d Cir. 2018) *("Cho")*, it found that *Rooker-Feldman* did not apply because it should not bar the federal court's jurisdiction when the appellant can show that his injuries were merely *ratified* – but not caused – by a state court decision. Also, in

Gabriel v. Am. Home Mortg. Serving, Inc., 503F at 92 (2d Cir. 2012) *("Gabriel")*, the Second Circuit held that the doctrine did not apply because, "the alleged litigation misconduct by [Defendants and their attorneys] was not the product of the state court's denial of sanctions, its judgement of strict foreclosure, or any other decision rendered, but was 'simply ratified, acquiesced or left unpunished by [the state court judgment]'" quoting *Hoblock v. Albany Cnty Bd. of Elections*, 422 f.3d, at 88 (2nd Cir. 2005).

In *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) *("Hertz")*, the Court concluded that: "the principal place of business"... should normally be the place where the corporation maintains its headquarters...' thereby reversing the lower court's rejection of Hertz's request to move the case from a California court to a federal court.

In *Aybar v. Aybar,* 2021, N.Y. Slip Op. 05393 *("Aybar")*, the New York Court of Appeals ("NYCA") ruled that foreign corporations are not subject to state court jurisdiction. Hence, NYCA determined that foreign corporations are not subject to jurisdiction of New

York courts, because even though they were licensed to do business in the state, they are not incorporated in the state or have their "principal places of business there."

New York Domestic Relations Law § 236 B (1)(d) holds that, "The term separate property shall mean... (2) compensation for personal injury... (3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or effort of the other spouse." *See also*, 26 U.S.C, § 104 (a)(2), cited on page 3, *supra*. Further, New York Domestic Relations Law § 236 (B) (5) (a), requires that a divorce court resolve any and all issues regarding the distribution of marital property before entry of a *final* judgement of divorce, except the parties reached an agreement, either before the divorce proceeding or before trial.

New York Consolidated Laws, Civil Practice Laws & Rules § 5519 (c) ("CPLR § 5519 (c), holds, in part, "Stay and limitation of stay by court order. The court from which an appeal is taken, or the court of original instance may stay all proceedings to enforce the

judgment or order appealed from pending an appeal..."

New York Laws, General Obligations, *Article 5, Title 15 (j)* defines *Power of Attorney* as: "...a written document ... by which a principal with capacity designates an agent to act on his or her behalf."

The New York Penal Code, § 170.10, holds that:

> "A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written document which is or purports to be, or which is calculated to become or to represent if completed, a deed, will, codicil, contract, assignment,...or any instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status..."

See also, New York Penal Code, § 20.00:

> "if a person acts with the mental state required to commit an offence and requests or solicits another person to commit the crime or

> intentionally assists in the commission of the crime, that person may be charged with the commission of the crime, even though, he didn't commit the crime himself or herself."

And the *Black's Law Dictionary* defines the signature as "The act of writing one's name upon a deed, note, contract, or other instrument, either to identify or to authenticate it, or give it validity as one's own act..." Also related to the *Fourteenth Amendment* in the context of this matter is, 26 U.S.C. § 7201, cited on page 3, *supra.*

Fed. R. Civ. P., 8 (b) mandates that when a civil action is initiated, the defendant(s) named in such action, *must* file a response(s), in a timely fashion, either admitting or denying the allegations made in the complaint.

Pursuant to Fed. R. Civ. P., 15 (a), a plaintiff may amend his complaint within 21 days after serving it, or at any point before the defendant(s) answer it. Hence, a plaintiff may choose to amend a complaint for numerous reasons, such as to include additional claims, correct facts, add additional parties to the suit, include additional requests for relief,

clear up inadequate claims, and so forth. The rule specifically enjoins the district court to "*freely* give leave when justice so requires." Rule 60, provides that: "...court may correct a clerical mistake arising from oversight or omission whenever one is found in a judgement, order, or other part of the record..."

The position of this Court on dismissal of cases by district courts is unequivocal. In *Lachance v. Erickson*, 522 U.S. 262, 266 (1998) *("Lachance")*, for example, it wrote in reference to *sua sponte* district court decisions: "The core of due process is the *right* to be noticed and a meaningful opportunity to be heard." See also, *Gosnell v. City of Troy*, 59 F.3d. 654, 658 (7th Circ. 1995) (Eastbrook, J.) *("Gosnell")* (stating that notice and opportunity to be heard "is due process in its proper sense"). Also, in *Nelson v. Adam USA, Inc.*, 529, U.S. 460, 465–68 (2000) *("Nelson")*, the Court ruled that due process was violated when a court, *sua sponte*, added a defendant and entered judgement without giving the defendant an opportunity to file a responsive pleading. It added, "the opportunity to

respond is fundamental to due process." *Id*, at 466.

III. Factual and Procedural Background

In the course of a divorce proceeding in the New York Supreme Court sitting in Rockland County, New York - *Leaticia Osuagwu v. Chinonyerem Osuagwu,* # 036070/2020 ("*Osuagwu*" or "the state case") the State Court – Judge Sherri Eisenpress, at a pretrial session, ruled that the property located at *49 King Arthur Court, New City, New York 10956* ("the property" or "the petitioner's property" or "his property"), where the petitioner and his ex-wife, respondent - Leaticia Osuagwu ("Leaticia") resided prior to the divorce proceeding, was marital property, that it be sold immediately, and that the proceeds be divided between the two parties, even as it repeatedly referred to the funds with which it was purchased, in whole, as "the settlement."[3] *Doc. # 1,* p. 20, ¶ 113.

---

[3]In 2014, the petitioner – a physician, received a *Settlement* of $1.75 million in a § 1983 personal injury action – *Osuagwu v. Gila Regional Medical Center, et al,* 11- cv -1 MV /

Notably, the State Court's ruling was rendered, (1) based partially on "testimony" presented during the session, by respondent - Phyllis Simon ("Ms. Simon") (also Leaticia's attorney in that proceeding), stating that the property was in foreclosure, when in fact that statement was a lie, and subsequently verified as such by the petitioner (*Id*, pp. 11 – 13, ¶¶ 71 – 80);[4] (2) despite negating evidence and undisputed testimony presented by the petitioner, including that the property was purchased wholly with part of a personal injury *Settlement*, on which he had paid no income tax (*Id*, p. 11, ¶68) and that Leaticia had contributed nothing to the purchase and had contributed nothing to its maintenance

---

Thus far, neither the IRS nor the New Mexico government (the jurisdiction of that action) has ever audited, or so much as written a letter to the petitioner for failure to pay taxes on the *Settlement* or for any other tax offense. *Id*.

[4] As a result of expenses incurred in the course of founding a highly capital-intensive heath technology company, the petitioner briefly fell short on his tax obligation on the property, but about the commencement of the divorce proceeding, he had concluded arrangements to cure the debt. *Id*, p. 10, ¶ 63; footnote # 3.

(as well as to other household expenses) preferring instead to support her extended family with her income (Id, p. 10, ¶ 60; p. 11, ¶ 69); (3) despite Ms. Simon's acknowledgment that the petitioner had paid no taxes on the *Settlement*, even once referring to that action or lack thereof, as a "tax dodge" (Id, p. 17, ¶¶101 -102) and (4) despite its own admission, later on in the proceeding that it could not determine if taxes had been paid on the *Settlement* or not. Id. p. 20, ¶ 113(a).

Subsequently, on the strength of *ex - parte* communication with Ms. Simon, the State Court issued two orders (hereinafter referred to as *"Orders of Empowerment"),* authorizing Leaticia to sign the name and signature of the petitioner to sale documents (including to the *Memorandum of Agreement,* the *Contract of Sale*, the *Deed* and various other pertinent documents) to enable the sale of the property (Id, pp. 15 – 17, ¶¶ 88 – 100).

Notably, the *Orders of Empowerment* did not mandate explicitly or otherwise, that the respondents dispose of the property or sign the signature and name of the

petitioner to the sale documents *before* the entry of *final Judgement of Divorce.*

In two separate letters to the State Court, the petitioner challenged the legality of the *Orders of Empowerment,* and requested that it reconsider them, but the State Court never responded to the letters. Id. Also, the petitioner, by phone and e-mail, contacted respondent - Arvind Galabaya ("Mr. Galabaya"), the attorney for the prospective buyers of the property – respondents - Thomas Amadeo and Yanira Amadeo ("the Amadeos"), warning that the sale of the property would be illegal, given that his (the petitioner's) signature and name were being appended to the home sale documents, against his wishes, but Mr. Galabaya disregarded the warnings. Id, p.18, ¶¶ 105 – 108; p.21, ¶¶ 114 -115.

In a *Decision* rendered at the end of trial on October 22, 2021, the State Court reiterated the *Orders of Empowerment* (and the petitioner reiterated his objection to them as well), adding that in the event taxes are ever assessed on the *Settlement,* the petitioner alone would bear the full burden of such taxes, while Leaticia was to be totally

absolved from them. Id, p. 20, ¶ 113(b)(c).

Following the State Court's *Decision*, the petitioner, pursuant to New York Consolidated Laws, Civil Practice Laws & Rules § 5519 (c), filed motion to stay execution of the sale of the property pending the outcome of appeal, ("CPLR § 5519 motion"). Id, p. 21, ¶¶117 - 119.

Subsequent to the above-referenced CPLR § 5519 motion and without even bothering to file an answer or waiting for a ruling by the State Court, Ms. Simon oversaw the completion of the sale of the property and transfer of title to the Amadeos, which action included, as before, the signing of the petitioner's name and signature, by Leaticia, to the closing documents, including a new *Deed* - which was recorded and eventually filed with the county clerk by respondent – Amtrust Title Insurance Company ("Amtrust Insurance"). Id, pp. 21 - 22, ¶¶ 120 - 123.

Following the sale, the State Court, rather than penalize the respondents for violating judicial procedure, *ratified*

their action. Id, pp. 23 – 24, ¶132.

In a sworn *Affirmation* filed *after* the sale, Ms. Simon indicated that respondent - Home Point Financial Corporation ("Home Point Financial") - the mortgage lender for the transaction, was aware of the circumstances surrounding the sale of the property and had no problem participating in the transaction. Id, p. 25, ¶138. In the same *Affirmation,* Ms. Simon argued that the *Orders of Empowerment* were tantamount to *Power of Attorney*, despite the fact that no finding of legal incompetence or incapacity on the part of the petitioner was ever made before or during the divorce proceeding. *Id.* ¶ 137. Furthermore, in an e-mail to the petitioner, Ms. Simon characterized the above-referenced CPLR § 5519 as "meaningless." Id, p. 21, ¶119.

Subsequently, Home Point Financial, through its attorney, respondent-Marianne Gonzalez ("Ms. Gonzalez"), filed a 1099 form with the IRS (and the New York State Department of Taxation & Finance), indicating taxable income of $382,500.00 to the petitioner, arising from the sale of the property. Id, p.23, ¶129. However, neither Ms. Gonzalez,

nor Home Point Financial (nor its parent company – respondent Home Point Capital, Inc. ("Home Point Capital") disbursed or remitted this sum to the petitioner, rather, they forwarded the sum to Ms. Simon, who later informed the petitioner that he would be receiving only $55,089.22, as his share of the proceeds of the sale. *Id.* p.25, ¶139. The petitioner declined to accept the $55,089.22. Id, ¶140.

Subsequently, the petitioner contacted the IRS and was instructed that as far as that agency was concerned, he (the petitioner) was liable for paying income taxes on the $382,500.00 indicated on the 1099 form and that failure to do so could result in prosecution and incarceration for tax evasion or failure to pay income tax, unless the filer of the form retracted it. Id, p.23, ¶131.

A detailed letter by the petitioner to Ms. Gonzalez, explaining his tax predicament and requesting that the 1099 form be retracted immediately, pending the outcome of his state appeal, went unanswered. Id, pp. 25 – 26 ¶¶ 142 – 143.

On January 13, 2022, the petitioner filed *Notice of Appeal*, to commence the appeal of the *Orders of Empowerment* and the above-referenced *Decision* to the New York Supreme Court, Appellate Division ("State Appellate Division"), and to challenge the award of *Child Custody* to Leaticia, etc. Id, p.24, ¶¶ 134 -135. However, the State Appellate Division dismissed the petitioner's appeal, on account of a *Decision* could not be appealed, but subsequently granted him leave to refile his appeal, after the entry of *Judgement of Divorce* – the final order, by the State Court. Id, pp. 26 - 27, ¶¶144 – 146.

On February 7, 2022, about five months *after* the sale of the property, the State Court entered its *Judgement of Divorce.* Id, p.24, ¶133. The petitioner refiled his *Notice of Appeal,* on or about April 15, 2022 (Id. p. 26, ¶146. The state appeal is currently in process.

On May 10, 2022, the petitioner filed *Complaint (Doc. # 1)* in the United States District Court, reciting the foregoing narrative, and seeking declarative, injunctive and monetary damages, predicated on 26 USC§ 7434(c)(2) - *Fraudulent Filing of*

Informational Return and supplementary state claims - *Civil Trespass, Malice, Negligence, Civil Conspiracy* and *Intentional Infliction of Emotional Distress.* In the *Complaint*, he cited the violation of *Article VI, Clause 2* (the *Supremacy Clause*), the *Fourteenth Amendment* and other statutory provisions. by the State Court, as having enabled his injury. Id, pp. 30 – 31, ¶¶ 168 – 170. Attached to the *Complaint* were 36 exhibits, comprised mostly of documents derived from the records of the New *York State Court Electronic Filing* system (NYSCEF). He indicated explicitly, that two of the named defendants - Home Point Financial and Home Point Capital, unlike the others who were citizens of the state of New York, had their respective corporate headquarters in Ann Arbor, Michigan. Id, p. 4, ¶¶ 7 – 10.

Less than 30 days after the filing and service of the *Complaint*, the District Court – Judge Cathy Seibel, *sua sponte* and without notice to the petitioner, entered an *Order of Dismissal,* citing, as principal reasons, Lack *of Subject Matter Jurisdiction* (pursuant to the *Younger Abstention* doctrine, the *Rooker-Feldman doctrine*

and *Diversity Jurisdiction)* and *Failure to State a Claim*. See, 40a – 41a, *infra*. In its *Order*: (1) the District Court acknowledged that Home Point Financial and Home Point Capital were from the state of Michigan, while the rest of the parties, including the petitioner were from the state of New York (24a – 25a); (2) citing 28 U.S.C § 1332 and referencing *Hertz*, it conceded that "A corporation is, however, a citizen 'of every State or foreign state by which it has been incorporated, or of the State or foreign state where it has its principal place of business" (66a), but concluded that Home Point Financial and Home Point Capital were not foreign citizens, and therefore *Diversity Jurisdiction*, did not apply, to warrant federal jurisdiction (*Id*); (3) it asserted that the petitioner had sought to bring a 42 U.S.C. § 1983 action ("Claims of constitutional violations") against the respondents and had called for their "Private prosecution," (52a – 56a), when in fact the petitioner made no such claim or request in his *Complaint*; (4) while it acknowledged that the State Court empowered Leaticia to sign the petitioner's name and signature to sale documents for the property and that the

petitioner had challenged the legality of that action (32a – 34a), it did not state categorically, if the *Orders of Empowerment* were constitutional or not; (5) while it acknowledged that the property was sold while the aforementioned CPLR § 5519 motion was pending (35a), it nevertheless concluded that the respondents were acting in accordance with court order when they proceeded to sell the property, and were therefore justified in doing so (46a – 51a); (6) its stated: "If the state court's determination that 49 King Arthur Court was marital property, as well as its orders directing the property's sale and authorizing Leaticia Osuagwu to sign all relevant documents on behalf of Plaintiff to effectuate its sale, constitute a *final* [italics, the petitioner's] state-court judgment, then Plaintiff is prohibited, under the *Rooker-Feldman* doctrine" (51a), yet acknowledged that the property was sold on October 25, 2021 (35a), but left out the fact that the final *Judgement of Divorce* was entered on February 7, 2022 (<u>see,</u> p. 21, ¶ 2, *supra*); (7) it acknowledged that a form 1099 was filed by respondents, that the form derived from a transaction that had been enabled by one of them signing

the petitioner's name and signature to legal documents against his consent (33a, 35a), that the form indicated taxable income of $382,500.00 to the petitioner and that the defendants failed to remit the indicated sum to him (36a), yet it concluded that petitioner had failed to state a claim upon which he could be granted relief (56a – 64a); (8) it acknowledged, but did not refute the petitioner's fear of prosecution and incarceration as a direct result of the filing of the 1099 form (pursuant to 26 U.S.C. § 7201), (39a), yet it concluded that petitioner had failed to state a claim upon which he could be granted relief (56a - 64a); (9) citing *Wachtler v. County of Herkimer*, 35 F.3d 77, 82 (2d Cir. 1994) *("Wachtler")*, it stated, "The Court may also dismiss an action for failure to state a claim on which relief may be granted, "so long as the plaintiff is given notice and an opportunity to be heard," (26a,), yet, as indicated above, it dismissed the *Complaint* and directed the respondents not to answer it; (10) it stated that a 1099 form was not information return, as defined by 26 U.S.C. § 6724 and as such the petitioner had no basis for a 26 U.S.C. § 7434 claim (footnote # 10, 61a - 62a), yet it

granted narrow leave to the petitioner to replead his claims based on an accounting discrepancy on the above-referenced 1099 form, and to restricted the claims to only two of the ten named respondents - Ms. Gonzalez and Home Point Financial, further mandating that if the petitioner did not comply within 30 days it would enter a final order dismissing the case entirely (39a, 60a and 63a - 64a). And so forth.

In the *Order of Dismissal*, the District Court did not dispute the adequacy of the filing or service of the *Complaint, or* the role of the various defendants named in it, nor did it dispute that Ms. Simon had deliberately lied to the State Court, to the effect that the property was in foreclosure, when in fact, the opposite was true, nor did it dispute that the funds with which the property was purchased was a *Settlement*, as opposed to marital income, to which Leaticia was legally entitled. Further, the District Court did not acknowledge exceptions to *Rooker-Feldman,* as a basis for jurisdiction and in acknowledging exceptions to *Younger,* excluded the *Lack of State Forum* exception, in its citation of *Gibson*. 42a. And so forth.

Subsequently, the petitioner filed *Motion for Reconsideration and Leave to Amend ("Motion to Amend") - Docs. # 15 and 16,* pursuant to Fed. R. Civ. P., Rules 15 (a) and 60, in which among other things, (1) he emphasized the fact that his CPLR § 5519 motion was pending when the property was sold, and therefore technically speaking, the respondents were not acting in accordance with court order when they sold the property, since, in accordance with judicial rules, the motion legally *estopped* the sale, pending a ruling on it by the State Court, and therefore *Rooker-Feldman* did not apply (*Doc. # 16,* pp 11-13, ¶ 40); (2) he invoked the District Court's own argument by pointing out that the sale of the property occurred *before* the entry of the *Judgement of Divorce* – the *final* order of the State Court on February 7, 2022, and therefore, technically they could not have been acting in accordance with court order when they sold the property, and therefore *Rooker-Feldman* did not apply *(Id.);* (3) he argued that the circumstances of *Osuagwu* mandated legitimate exception to *Rooker-Feldman*, based on "deception and fraud," as evidenced

by the reliance of the State Court on Ms. Simon's false testimony, in issuing the *Orders of Empowerment* to enable the sale of the property as marital property (*Id*, p.13, ¶41); (4) invoking *Exxon-Mobil*; he asserted that his pending appeal to the State Appellate Division, was in pursuit of objectives, other than those sought in the federal court – challenge of *Child Custody* award to Leaticia, etc. (*Id*, p.13, ¶42); (5) he cited pertinent case law including *Aybar, Cho and Gabriel, to* support his argument that *Younger* and *Rooker-Feldman did* not apply in the case (*Id*, pp. 12 & 15); (6) he argued that *Aybar* mandated exception to *Younger* – by virtue of *Lack of State Forum* and therefore, assured *Diversity Jurisdiction*, consonant with 28 U.S.C. §1332 (*Id*, pp. 14 – 16, ¶¶ 43 – 44); (7) he argued that the narrow leave to which he had been granted to replead his claim based only on an accounting discrepancy, minimized his injury unfairly and was therefore inadequate, especially as it did not address the inevitable legal problems with the IRS and other yet unknown liability, to which he was exposed as a direct result of the filing of the 1099 form (*Id*, pp.19 – 20); (8) invoking the

District Court's own citation of *Watchtler* and also citing *Lachance, Gosnell* and *Nelson*, he pointed out that he had been denied due process by virtue of the manner in which his *Complaint* had been dismissed (*Id*, p.18, ¶ 48); (9) he pleaded that, based on the elements enumerated above, he be allowed to reframe his claims, as allowed by Fed. R, Civ. P. 15(a), by specifying that he had been injured, pursuant to 26 U.S.C. § 7434 and other provisions, when the respondents proceeded unlawfully to sell his property prematurely, while a legitimate motion to *estop* the sale was pending and before the entry of the *Judgement of Divorce* - the final order (*Id*, p.10, ¶38; pp.18 – 19, ¶49). Etc.

In response to the *Motion to Amend* and without input by any of the named respondents, the District Court issued a brief text-only statement summarily denying the motion, without providing any legal basis for the denial or disputing specific points raised in the motion (21a), and further, declined to provide an explanation, when requested in written by the petitioner. *Doc. # 18.* This was followed by entry of a final

text-only *Order* dismissing all of the petitioner's claims. 19a.

On timely appeal to the Second Circuit, the petitioner recited the facts of the case, including the points outlined above, and reiterated his previous argument. Aside from a challenge by Home Point Financial and Home Point Capital (jointly represented by counsel), regarding Ms. Simon's false statement to the State Court that the property was in foreclosure, which the petitioner addressed conclusively (*Reply Brief of Appellant*, p. 12, footnote # 5), and their insistence that they were acting in accordance with court order when they proceeded to dispose of the property, none of the respondents, in any of their respective answer briefs, substantially refuted or denied any of the foregoing statements of fact and procedural history, including that the aforementioned *Orders of Empowerment* were illegal, that they sold the property while a legitimate motion was pending, and that that they were fully aware of the motion at the time of the sale, or that the sale occurred before the entry of final *Judgement of Divorce*, or that the property was purchased, in whole, with a portion of the *Settlement*

derived from *Osuagwu v. GRMC.* Further, the petitioner indicated that, by declaring *49 King Arthur Court* property marital, technically, the State Court had retroactively converted the *Settlement* with which it was purchased into taxable income, for which he would be owing considerable back taxes (including for penalties) and would inevitably be prosecuted and imprisoned, if he failed to pay the taxes. *Brief for Appellant,* p. 50 – 51. Etc.

On completion of briefing on the appeal (with Leaticia, Ms. Simon and Mr. Galabaya, failing to file answer briefs), the three-man panel of Circuit Judges - Jose Cabranes, Gerard Lynch and Raymond Lohier, Jr, issued a *Summary Order*, affirming, *in toto*, the District Court's *Order of Dismissal.* 6a. There were no oral arguments. *Inter alia,* the *Summary Order* is characterized by the following critical facts: (1) citing *Pa. Pub. Sch. Emps. Ret. Sys. v. Morgan Stanley & Co.,* 772 F.3d 111, 117 - 18 (2d Cir. 2014), it agreed that Home Point Financial and Home Point Capital, are foreign citizens, but insisted that because there was no "complete diversity," federal jurisdiction did not apply in the matter

(13a); (2) while acknowledging that petitioner's state appeal was/is pending, but completely ignoring multiple references to and analysis of *Aybar* by the petitioner (*Brief for Appellant*, pp. 31, 39 - 40), it affirmed the District Court's dismissal of his claims on the basis of *Younger* (17a); (3) despite extensive citation of *Cho* and *Gabriel* in the *Brief for Appellant* (*Id.*, pp. 19, 20, 26, 28, 31, 34, 40, 41 and 42) – both cases deriving from previous decisions of the Second Circuit, it, without acknowledging or attempting to refute the citation, affirmed the District Court's dismissal of the *Complaint* on the basis of *Rooker-Feldman* (17a); (4) despite references to and analysis of the respondents' sale of his property (especially the fact that his signature had been appended to home sale documents, against his consent to enable the sale), the fact that the above-referenced 1099 form had been filed with the IRS (without the sum indicated on it being disbursed to the petitioner) and the inevitable sequelae of that action – prosecution and possible incarceration, etc., and that as a result he had declined to file his tax returns for the years 2021 and 2022, having made the choice of risking

prosecution for failure to file tax returns rather than for making "false" statements on his returns (*Brief for Appellant*, pp. 47 - 51), the panel in its *Summary Order*, never once acknowledged these facts, but rather affirmed the District Court's dismissal for *Failure to State a Claim* under § 7434 (11a); (5) despite citation and analysis by the petitioner of this Court's rulings on due process (*Brief for Appellant*, pp.53 - 54) – *Lachance, et al.*, the panel never acknowledged these rulings or attempt to construe them, but rather concluded that the dismissal of the petitioner's claims by the District Court did not violate due process (11a); (6) it completely discountenanced every argument made by the petitioner (already narrated in detail in this petition), especially on *Aybar* and its relevance to *Diversity Jurisdiction* and *Younger* and yet stated, "As noted, the District Court properly dismissed Osuagwu's complaint, and in his motion seeking reconsideration Osuagwu identified no controlling decisions or facts that the court had overlooked. Accordingly, we conclude that the District Court did not abuse its discretion in denying his motion for

reconsideration" (15a); (7) in various places, it justified the District Court's denial of the petitioner's *Motion to Amend*, on the fact that he had failed to amend his *Complaint* as instructed in the *Order of Dismissal* (9a, 10a, 11a, 16a & 17a). Etc.

Following the timely filing of *Petition for Rehearing and Hearing En Banc ("Petition for Rehearing")*, in which the petitioner pointed out, *inter alia*, that the Second Circuit's ruling contradicted its own precedent on *Rooker-Feldman*, as evidenced by *Cho* and *Gabriel*, and was also in conflict with the NYCA decision in *Aybar* as it pertains to *Younger*, the Second Circuit denied the *Petition*. 1a.

REASONS FOR GRANTING THE WRIT

I. The Second Circuit's Decision on important questions of Federal Law are inadequate and should be decided by this Court.

A. There is no statute or precedent in the annals of America jurisprudence that provides for a court to

> **empower one individual to sign the name or signature of another to *bona fide* legal documents, against the consent of the latter, absent lawful *Power of Attorney*, and by this means deprive the latter of his property and also endanger his liberty.**

Never in the history of these United States, has the right of even the worst outlaw been violated as the State Court did. And so, while this Court has entered decisions on matters touching on deprivation of property in the context of the *Fourteenth Amendment*, none of these other cases has involved the sanctioning of such deprivation by a court of law, a magistrate or any other agent acting under the color of state law, as happened in this case. Therefore, in accordance with the intention of that amendment and other statutory and constitutional provisions, there can be no doubt, based on the undisputed facts, that State Court overstepped its authority and abused its discretion, that the District Court was wrong to dismiss the petitioner's *Complaint*, and that the Second Circuit

was equally wrong to affirm that dismissal. Pursuant to the foregoing statement, the following considerations are imperative.

Firstly, the petitioner avers that although the constitution is not explicit on the issue, there was *prima facie* assumption on the part of its framers, that the meaning and legal consequences of the name and signature of an individual are *sacrosanct,* such that no one, especially a state actor would ever dare to violate them. Therefore, there can be no question that a person's name and signature are at the core of his or her personhood – the very fundamental right for which the *Fourteenth Amendment* was intended, and since this Court is the ultimate custodian of the constitution, it must firmly and unequivocally condemn the *Orders of Empowerment,* and any action deriving from or enabled by them, as illegal and unconstitutional, and in accordance with applicable law – the New York Penal Codes, §§ 170.10 and 20.00, assign the offense of *Forgery* – a felony crime in every jurisdiction, to the action of the State Court and the respondents. Consequently, the ruling of the Second Circuit should be overturned.

Arguably, if the State Court had ordered the property sold on the basis of its authority alone and not mandated that Leaticia sign the petitioner's name and signature to *bona fide* legal documents, it may have been within its discretion to do so, pending a reversal by a higher court, but clearly that was not the case here, and Ms. Simon's futile attempt to rationalize the *Orders of Empowerment* as deriving from *Power of Attorney* should be offensive to this Court. In any case, since the State Court has shattered the sanctity of the signature - something that is completely unprecedented, it now falls to this Court to condemn it on the record, and nip it in the bud, before it becomes a dangerous precedent. Further, the State Court's violation of the constitution, warrants a statement on the second exception to *Younger* – *"patently unconstitutional statutes"* or in this case, *"patently unconstitutional court orders,"* as a basis for federal jurisdiction, in addition to the third – *"lack of state forum."* See, II, p. 43, *infra.*

Secondly, the State Court, by transforming what should rightfully be untaxed personal asset of the

petitioner's into a retroactively taxable marital income, despite admitting that it lacked the requisite knowledge to take such action, not only violated 26 U.S.C, § 104, New York Domestic Relations Law § 236, and other applicable statutes, but cruelly and unfairly condemned the petitioner to inevitable incarceration for tax evasion, thereby, not only depriving him of his property without due process of law, but endangering his liberty as well. Further, the petitioner's suffering from his fear of incarceration for tax crimes, as a direct consequence of the felony crime of *Forgery* by which the respondents disposed of his property and later filed the offensive 1099 form, constitute a legitimate basis for his 26 U.S.C. §7434 claim, contrary to the position of the lower courts.

Indeed, had the state case - from which this petition ultimately arises, been like the multitude of other divorce matters that come before state courts every year, the petitioner would have been content to put the past behind him and move on with his life, but it was not so, the simple fact being that, he does not have the resources to pay the heavy taxes (currently

estimated at $1.7 million, inclusive of accumulating penalties for late payment) on the personal injury *Settlement* with which the property was purchased, and as a result now finds himself in the very dangerous horns of dilemma. Therefore, in the interest of justice, this Court must exercise its supervisory power, lest the rulings of the State Court, the District Court and the Second Circuit not only violate his *Fourteenth Amendment* rights, but probably his *Eight Amendment* right as well, as inevitably he will be unfairly prosecuted and ultimately incarcerated for tax crimes.

And thirdly, by mandating that while Leaticia was entitled to half the *Settlement*, by virtue of it being "marital property," but that the petitioner alone bears the full burden of taxes of $1.7 million, the State Court violated yet another provision of the *Fourteenth Amendment* - "equal protection under the laws."

Without question, the conduct of the State Court showcases one of the worst instances of abuse of judicial discretion in all of American judicial history, unless this Court determines otherwise, that is. Therefore, this case

affords an excellent opportunity for this Court to make a pertinent determination on the scope of authority of a state court over the rights of the individual, pursuant to the intention of the *Fourteenth Amendment.*

B. There is no precedent in American jurisprudence, on record, whereby a party or parties in a legal dispute defied a pending legitimate motion by an adverse party, intended to stop the latter from being deprived of his property unconstitutionally.

In legal proceedings, it is unheard of, that a party or parties defied a motion by another party or parties in the manner in which the respondents did. The petitioner therefore reiterates his previous contention: *arguendo*, the State Court actually did have the constitutional authority to empower the respondents to place his signature and named, against his consent, to legal documents to enable the sale of his real property, when he filed his CPLR 5519 motion – based on a state statute that clearly defers to the *Fourteenth Amendment*, it technically *estopped* the defendants from selling his property,

without the motion having being decided by the State Court, and therefore their action was illegal and injurious to the petitioner. Therefore, since there is no alternative legal interpretation on record, this case provides an opportunity for this Court to make a determination on the legality or constitutionality of the respondents' joint action. Besides, as noted above, the *Orders of Empowerment* did not direct the sale of the property before the entry of the *final* judgement of the State Court (which in this case occurred five months after the sale), as mandated by state law. Hence, the argument advanced by the respondents, that they had acted in accordance with court order when they conspired to sell the property, is not supported by the facts and the law. In like manner, as the petitioner noted in his *Complaint* (*Doc. # 1*, p. 42, ¶ 231 & 232) the recording and filing of a new *Deed* for the property with the County Clerk by Amtrust Title Insurance, must be construed as a *Felony* offense, pursuant to New York Penal Law, § 175.35 – which prohibits a person or corporation from knowingly possessing and presenting a written document with false information to a public authority, servant or office, being

that, as with the 1099 form in question, the new *Deed* is a product of *Forgery*.

Further, there is no substantive difference between *Cho* or *Gabriel* and *Osuagwu v. Home Point Financial, et al.* since he (the petitioner) was injured when the respondents proceeded to sell his property, aided by the forging of his signature to sale documents of his property, while they were legally *estopped* from doing so. Hence, as the foregoing account demonstrates quite conclusively, in addition to meeting the dictates of Fed. R. Civ. P., 9(b), the petitioner also showed in his pleadings, "that his injuries were merely *ratified*, but not caused – by a state court decision," and the failure of both the District Court and the Second Circuit to demonstrate this difference, by means of detailed legal analysis, must be construed by this Court to mean that the petitioner's position is the right one, at least, in accordance with the Second Circuit's own precedent. Indeed, the contradiction inherent in the Second Circuit's ruling in this matter compared with its previous rulings, in the context of *Rooker-Feldman*, as exemplified by Cho and *Gabriel,* presents yet another

reason why this petition should be granted.

In sum, if the decision of the Second Circuit is allowed to stand, it will set a dangerous precedent, whereby any party in a legal proceeding, at least, within the jurisdiction of the Second Circuit could defy a pending motion and invoke *Osuagwu v. Home Point Financial, et al*, as a defense.

II. The Second Circuit's ruling on *Diversity Jurisdiction* and the *Younger Abstention* doctrine is in conflict with a Decision of the New York Court of Appeals

As noted above, in no place did any of the respondents, in their respective pleadings, or the District Court or Second Circuit, in any of their respective orders, acknowledge, let alone refute the petitioner's invocation of *Aybar* as a basis for *Diversity Jurisdiction* or exception to *Younger*. Hence, at least with regard to cases originating in the state of New York, *Aybar* – which prohibits state jurisdiction over foreign corporations, is unequivocal as a determinant of *Diversity Jurisdiction*, within the

meaning of 28 U.S.C. § 1332, and in accordance with previous decisions by this Court, as exemplified by *Hertz,* which the District Court itself cited in its *Order of Dismissal.* Further, in light of *Aybar* and perhaps similar statutes in other states, this Court, as a matter of practicality, should endeavor to review the concept of "Complete Diversity," upon which the Second Circuit concluded that the petitioner's claims could not be heard in federal court. Thus, if Home Point Financial and Home Point Capital, both of whom the Second Circuit agrees are foreign corporations, and if foreign corporations are not subject to New York jurisdiction as mandated by *Aybar,* in which legal forum could the petitioner have brought his claims, if not a federal court? Besides, if indeed, the District Court has no jurisdiction to hear the petitioner's claims for the reasons it cited, on what basis then, did it grant him leave to replead his claims against two respondents - one of whom it had declared to be a non-foreign citizen, and to base his claim on events to which it had determined the petitioner had no legitimate claim to relief, and especially as it stated categorically that the 1099 form is not informational return as

defined by 26 U.S.C. 6724? Definitely, these and related questions further highlight the contradiction inherent in the Second Circuit's own logic, whereby, on the one hand it avers that the District Court lacked jurisdiction, and yet on the other it justifies the dismissal of the petitioner's *Complaint*, supposedly, because he had failed to amend it, as instructed by the District Court! Indeed, it is imperative that the Court resolves this conflict, by intervening in this matter.

III. The Second Circuit sanctioned the egregious violation of the Petitioner's Due Process right by the District Court, by which it directed the Respondents to not answer his *Complaint* and dismissed it without noticing the Petitioner or granting him the opportunity to file a responsive pleading.

The *Federal Rules of Civil Procedure* spell out, quite explicitly, the process by which legal proceedings are to be conducted in district courts, and in no place in those rules does a provision exist, allowing for the

presiding judge to direct named defendants not to answer a properly filed and served complaint, especially before the plaintiff has been noticed and afforded an opportunity for a hearing, as even the District Court itself affirmed by its citation of *Wachtler*. Based on the letter of the rules of procedure, this Court must surely agree that the filing of a complaint and answer(s) by named defendant(s) is only a prelude to an established method of discovery and other processes, by which relevant facts may be uncovered, to aid the cause of justice and equity. Consequently, the Court must also agree that prior to the *sua sponte*, unnoticed dismissal of the petitioner's *Complaint*, there is no way the District Court could have known that relevant facts would not be uncovered had the respondents been allowed to answer it, or had discovery been performed in the course of the proceeding. Therefore, the District Court's premature dismissal of the *Complaint*, violated the petitioner's right to due process. Further, the denial of the petitioner's *Motion to Amend* violates the provisions of Fed. R. Civ. P, 15(a) and 60, and must be construed as a violation of his due process right, also.

These violations, especially of Fed. R. Civ. P, 8, definitely go beyond the usual and customary conduct of judicial procedure, as well as this Court's rulings, as exemplified by *Lachance, Gosnell* and *Nelson*. Notably, *Lachance,* specifies "the *right* to be noticed and ...heard," as opposed to the *discretion* of the court.

IV. The Construction of the terms -"willfulness"and "fraudulent" by the various circuits, in the context of 26 U.S.C. §7434, are at variance with one another.

In crafting 26 U.S.C. § 7434, Congress defined neither "willfulness" nor "fraudulent," essentially leaving it up to the interpretation of the courts. Hence, while the various circuits, including the Second Circuit (but thus far not this Court) have indeed construed the provision, their respective interpretations have been at variance with one another, hence constituting a veritable source of confusion.

In *Vandenhee v. Vecchio*, 54 F, App'x 577 580 (2013), the Sixth Circuit, in reference to 26 U.S.C. §7434, wrote: "[W]illfulness in this context connotes a voluntary, intentional violation of

a legal duty." (internal quotations omitted). To further complicate the issue, only the Third, Fourth and the Eleventh Circuits alone include "recklessness" in their definition. For instance, in *United States v. Rum*, 995 F.3d 882 (11th Cir, 2021), the Eleventh Circuit (referring to this Court's decision in *Safeco Insurance Co. of America v. Burr*, 551 U.S. 47, 127S, Ct. L.Ed.2d. 1045 (2007) wrote: "" willfully' is a word of many meanings whose construction is dependent on the context in which it appears... we have generally taken it to cover not only knowing violations of a standard, but reckless ones as well. *Id*, at 2208. (internal quotations and citations omitted)." It then went on to define "recklessness," which inevitably would provoke further semantic conflict. The term "fraudulent" as applied to the statute, is equally contentious.

Indeed, the pronouncement of the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) in the matter of *Martin Doherty v. Turner Broadcasting, Inc.* 22-7072 (D.C. Cir. 2023) *("Doherty")*, makes it all the more imperative that this Court establish a definitive standard or

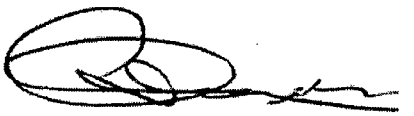
framework on how 26 U.S.C. §7434 is interpreted, going forward. Hence, in reversing the verdict of the United States District Court for the District of Columbia in *Doherty,* the DC Circuit wrote, in reference to the concept of "Willfulness," "As far as we are aware, neither the Supreme Court nor our Court has construed this provision, so we write on a largely blank slate."

For the purpose of this petition, at least until the Court makes a determination on the concept, the petitioner, following the example of the Eleventh Circuit, will rely on this Court's description of "willfulness" as a "word of many meanings," and aver that, the fact that by the admission of Ms. Simon herself, Home Point Financial was aware of all the issues surrounding the sale of the property, including that a motion challenging the sale was pending, and yet had no problem bankrolling the transaction, and thereafter filing the 1099 form and not remitting to the petitioner, the taxable income of $382,500 indicated on the form, is undeniable proof of "willingness" and "fraudulent" intent.

CONCLUSION

The Court should grant a writ *of certiorari* to review the *Summary Order* of the Second Circuit, or grant such other relief as justice requires, including a summary reversal of the *Order* and remand to the District Court.

Respectfully submitted,



Chinonyerem Osuagwu
Pro Se, Petitioner
245 N. Main Street,#299
New City, NY 10956
(845)893-9353
cobosmd@msn.com

Dated: October 12, 2023