

No: 24-632

ORIGINAL

IN THE
Supreme Court of the United States

CHINONYEREM O. OSUAGWU,

Petitioner,

Supreme Court, U.S.
FILED

DEC 05 2024

OFFICE OF THE CLERK

v.

LEATICIA C. OSUAGWU,

Respondent,

*ON A WRIT OF CERTIORARI TO THE
NEW YORK COURT OF APPEALS*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *New York State Court of Appeals* erred in determining that there was no constitutional violation, to warrant a hearing, in a case in which the state supreme court, among other *Decisions* and *Orders*, empowered the Respondent to sign the Petitioner's *Signature and Name*, "on his behalf," to legal documents, despite his vehement objection, and *absent* legitimate *Power of Attorney*, thereby causing him to be deprived of property, and also placed his liberty in jeopardy.

PARTIES TO THE PROCEEDING

The sole Petitioner here is Chinonyerem O. Osuagwu.

The sole Respondent is Leaticia C. Osuagwu, hereinafter referred to as “the Respondent.”

RELATED PROCEEDINGS

New York Supreme Court, Ninth District, Rockland County:

Leaticia C. Osuagwu v. Chinonyerem O. Osuagwu, 036070/2020, *Judgement of Divorce*, entered on February 3, 2022.

New York Supreme Court, Appellate Division, Second Department:

Leaticia C. Osuagwu v. Chinonyerem O. Osuagwu, 2022-04034, *Decision & Order*, entered on July 31, 2024.

New York Court of Appeals:

Leaticia C. Osuagwu v. Chinonyerem O. Osuagwu, APL-2024-00107, decision, entered on October 17, 2024.

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

Chinonyerem Osuagwu v. Home Point Financial Corporation, 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 Corporation, et al, 22-

1403, *Order on Petition for Rehearing*,
entered on June 27, 2023.

Supreme Court of the United States:

Chinonyerem Osuagwu v. Home Point Financial Corporation, et al, no: 23-428, *Petition for a Writ of Certiorari*, denied on or about January 5, 2024.

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OPINIONS BELOW

Judgement of Divorce of New York State Supreme Court (11a – 25a) is unpublished. *Decision & Order of New York State Supreme Court Appellate Division* (3a – 10a) is published by *New York State Law Reporting Bureau* pursuant to Judiciary Law § 431. *Order of New York Court of Appeals* (1a – 2a) is unpublished.

JURISDICTION

The *New York State Court of Appeals* entered its *Order* on October 17, 2024. This Court has jurisdiction under 28 U.S.C. § 1257.

STATUTORY PROVISIONS

The *Ninth Amendment* provides that, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

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

STATEMENT

I. Introduction

In the entirety of recorded American judicial history, there has never been a case in which any person or entity, acting under *Color of Law* – state or federal, at least since after the ratification of the *Fourteenth Amendment*, authorized one party in a legal proceeding, to sign the *Signature* or *Name* of another party to legal documents – in essence enabling the former to *impersonate* the latter in a legal transaction, despite the latter's vehement objection, and absent a legitimately executed *Power of Attorney*, and by that means, caused the latter to be, not only deprived of property, but also placed his very liberty in jeopardy. Hence, this case, in which precisely such a thing actually happened, is a particularly unique one.

Inasmuch as this matter arises from a divorce proceeding – of which typically the federal courts, much less the Supreme Court of the United States, do not usually get involved, the egregious constitutional violations that

eventuated from this particular divorce case, are no less consequential, *vis-à-vis* fundamental constitutionally guaranteed rights, than those arising from other cases – civil and criminal, which have been heard by this Court, over the years.

With this *petition*, I – the Petitioner, humbly seek to have this Court – the ultimate interpreter of the Constitution, determine whether the civil rights which the *Fourteenth Amendment* sought to protect, extends to the legal use of a person's *Name* and *Signature* by another, especially against the scenario described above, in addition to other related violations that eventuated from this matter. The *New York Court of Appeals* ("NYCA") – the highest court of the state, from where this appeal is taken, has refused to address these issues, having determined that "no substantial constitutional question is directly involved."

II. Legal Background

For the Supreme Court to review a state court decision, it is necessary that it appear from the record that a federal question was presented, that

the disposition of that question was necessary to the determination of the case, and that the federal question was actually decided or that the judgment could not have been rendered without deciding it. *Sw. Bell Tel. Co. v. Oklahoma*, 303 U.S. 206 (1938); *Raley v. Ohio*, 360 U.S. 423, 434–437 (1959).

Underlying the United States Constitution is an antitotalitarian principle—i.e., the government, or any of its instrumentalities, cannot define, regulate, or compel aspects of life that are fundamental to an individual's *identity* and *personhood*, and in no other provision is this principle more implicit than in the *Fourteenth Amendment*.

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. But, while that amendment states broadly, the need for *Due Process* in matters of life, liberty and property, neither it nor any other provision in the entirety of the Constitution says anything, explicitly, about the ramification of the

placement of a person's signature or name on legal documents, as it pertains to that person's civil rights. Thus far, only the various state *Fraud*, *Forgery* and *Impersonation* statutes address this phenomenon, but not specifically from the viewpoint of the Constitution. In the case of New York – from where this case originates, for instance, New York Penal Code, §§ 170.10 and 190.25 ("NYP § 170.10" & "NYP § 190.25"), hold respectively:

"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: (1) 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, or (2) A public record, or an instrument filed or required to be filed or authorized by law to be filed in or with a public office...;

"A person is guilty of criminal impersonation in the second degree when he: (1) Impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another..."

See also, New York Penal Code, § 20.20 ("NYP § 2020").

The *Ninth Amendment* was included in the *Bill of Rights*, to address fears, that expressly protecting certain rights might be misinterpreted to sanction the infringement of the state on those rights not specified in the Constitution. Hence, pursuant to the *Ninth Amendment*, in various landmark cases, this Court has construed the *Fourteenth Amendment* to protect certain rights not specified in the Constitution, holding that there are certain fundamental rights that the government may not infringe upon, *under any circumstances*, even if it provides procedural protections, for instance, the right to *Privacy*, in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) and *Meyer v. Nebraska*, 262 U.S. 390 (1923)); the right of parents to direct the upbringing of their children, in *Troxel v. Granville*, 530

U.S. 57 (2000) and the right of anyone to marry another of their choice, in *Loving v. Virginia*, 388 U.S. 1 (1967), to name but a few.

Hence, just as the Constitution is not explicit about *Privacy* and the other *Substantive Due Process* rights indicated above, until such rights were recognized and validated by this Court, so is a person's *Signature*, defined by the *Black's Law Dictionary* 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 relevant to this matter is *Procedural Due Process*. Hence, this Court has construed the *Fourteenth Amendment's Due Process* clause, to mean that government actors – including judges and magistrates, must follow certain procedures, before they may deprive a person of a protected life, liberty, or property interest. *Mathews v. Eldridge*, 424 U.S. 332, 333 (1976).

The laws of every state, including those of New York, as well as under federal jurisdiction, provide adequate

framework for *Procedural Due Process*, pursuant to the *Fourteenth Amendment*, as exemplified by the following statutes and case law, that pertain to this matter:

- (1) New York State Constitution, Article I, Section 11 (NY Const, Art I, §11), holds in part, “No person shall be denied equal protection of the laws of this state or any subdivision thereof. No person shall... be subjected to any discrimination in his or her civil rights...by the state or any agency or subdivision of the state;” notably, in *People v. David W*, 95 NY2d, 130, 136 [2000] (*People v. David*), the NYCA, stated, “...when the State seeks to take life, liberty and property from an individual, the State must provide effective procedure that guard against an erroneous deprivation;
- (2) New York Laws, General Obligations Laws, Article 5, Title 15 (j) (“GOL § 5-15”) defines *Power of Attorney* as: “...a written document ... by which the principal with capacity designates an agent to act on his or her behalf;”
- (3) New York Laws – Estates, Power & Trusts Article 6, § 2.2(b) (“EPT § 6-

22") provides that, if a married couple enters into a divorce proceeding, disposition of real property creates in them a tenancy by the entirety, which means that each holder has a distinct, separately transferable interest in the property, unless expressly declared by both parties to be a joint tenancy or tenancy in common;

(4) regarding the status of property in a marriage, the New York Domestic Relations Law § 236 B (1)(d) ("DRL § 236 B (1)(d)") holds in part, that: "The term separate property shall mean... (2) compensation for personal injury...;" conjoined with this statute, is 26 U.S.C, §104 (a) (2), which permits a taxpayer to exclude from gross income, "...the amount of any damages ...received (whether by suit or agreement...) on account of personal injuries ...,"

(5) with regard to procedure in a divorce matter in a New York trial court, at the preliminary conference in the proceeding, the Uniform Rules for New York State Trial Courts, § 202.16 Matrimonial Actions (f)(3) ("NYMA § 202.16") mandate, in part that, "At the close of the conference, the court shall direct the parties to stipulate, in

writing or on the record, as to all resolved issues, which the court then shall "so order," and as to all issues with respect to fault, custody and finance that remain unresolved... The court shall fix a schedule for discovery as to all unresolved issues...;"

(6) New York Domestic Relations Law § 236 (B) (5) (a) ("DRL § 236 (B) (5)") requires that a divorce court resolve any and all issues regarding the distribution of marital property after entry of a final judgement of divorce, except the parties reached an agreement, either before or during trial; notably, the NYCA itself validated this statute when it held that a judge may not order the sale of a marital residence during the pendency of a divorce case, over the objection of one spouse. *Kahn v. Kahn*, 43 N.Y. 2d, 203 [1977] (*Kahn*);

(7) New York Consolidated Laws, Civil Practice Laws & Rules § 5519 (c) ("CPLR § 5519"), 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...;"

(8) New York Consolidated Laws, General Obligations Law, § 5 – 703 (“GOL § 5-703”) holds that, “All notes and contracts in a transaction to device real property or to establish a trust of real property should include...identification of buyer and seller...;”

(9) Before real property can be foreclosed upon in the state of New York on account of tax delinquency, the owner of the property must be served a summons to appear before a judge or magistrate and provided with an opportunity to respond. New York Real Property Tax Law. §1194 (2022) (“PTL §1194”);

(10) Consolidated Rules & Regulations of the State of New York, Title 9, Part 587, Section 4 (CRR 9-587.4), strictly prohibits *ex parte* communication, an injunction that is echoed in Section 100.3 (B)(6)(a) of the Rules of Judicial Conduct for New York Trial Courts;

(11) New York COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (“the COVID-19 Act”), which was active from December 28, 2020, to January 15, 2022, mandated a moratorium on evictions and foreclo-

sures during the above-stated period, on account of the hardship on the citizenry occasioned by the COVID-19 pandemic;

(12) Pursuant to 26 U.S.C. § 7402, the adjudication of issues involving federal taxes lies within the purview of the United States District Courts, while the New York State Tax Appeals Tribunal has jurisdiction over state tax matters - New York Consolidated Laws, Tax Law, Art. 40. (“NYTL – 40”); and

(13) 26 U.S.C. § 7201, holds that any person, upon conviction for willful attempt to evade tax shall be fined and / or imprisoned for up to 5 years.

III. Factual and Procedural Background

In 2014, I received a post-trial settlement of \$1.75 million (“the Settlement”) in a 42 U.S.C. § 1983 personal injury civil action - *Osuagwu v. Gila Regional Medical Center, et al*, 11- cv -1 MV / SMV (“*Osuagwu v. GRMC*”) which was heard by the United States District Court sitting in Albuquerque, New Mexico. BFA, p.4.¹

As I have maintained, *ab initio*, I never paid any income tax – federal or state on the *Settlement*, and thus far, neither the *Internal Revenue Service* (IRS) nor the New Mexico government (the state tax jurisdiction for the award) has audited, or so much as written a letter to the Respondent or myself, for failure to pay income taxes on the *Settlement*, or for any other tax offense. *Id.* pp. 4 – 5.

It is undisputed, that with a portion of the *Settlement*, I purchased, in whole and without a mortgage, a piece of residential property – *49 King Arthur Court, New City NY, 10956*

¹ In support of the statements I make in this *petition*, in addition to citation of the Appendices (where possible), to show that both state appellate courts received the same information as I have presented here, I have referenced extensively, the documents filed on appeal to the *New York Supreme Court, Appellate Division - Brief for Appellant* (BFA), *Respondent's Brief* (REB), *Reply Brief of Appellant* (RBA) and *Record on Appeal* (ROA), with the cited portions of the briefs themselves citing the ROA. The *Brief of Attorney for the Child* (not referenced or cited in this *petition*, was also provided to the NYCA, with the above referenced documents as directed by the Clerk of that Court.

(hereinafter referred to as “the property” or “49 King Arthur Court”), where the Respondent (to whom I was married from 2012 to 2021), our two children and I lived, from 2014 to 2020. *Id.* p. 5. Undisputed also, is that the Respondent did not contribute to the purchase of the property or its maintenance, including, the payment of property taxes, or to household finances generally, insisting instead on supporting her extended family in Texas with her income. *Id.* p.6.

Following the receipt of the *Settlement*, I did not engage in paid employment, but founded and went about seeking funding for a startup company, while supporting the household with the remnant of the *Settlement*. *Id.* pp. 5 – 6.

On or about December 16, 2020, the Respondent, through her attorney – Ms. Phyllis Simon, (hereafter referred to as Respondent Attorney, and used interchangeably with Respondent) initiated divorce action against me in the *New York Supreme Court* (hereinafter referred to as the Trial Court. *Id.* p.7. I represented myself in that proceeding and subsequently in the appeal to the *New York*

Supreme Court, Appellate Division, Second Division (hereinafter referred to as “the AD-2”), and also to the NYCA.

According to the financial statement filed by the Respondent in the course of the Trial Court proceeding, in no place on her tax returns (filed as *Married, Filing Single*) since 2014 when the *Settlement* was received, until the commencement of the divorce action in 2020, did she report it or any portion of it as marital income. *Id.* p. 6.

On May 22, 2021, at the preliminary conference in the Trial Court proceeding, Respondent Attorney, without presenting requisite proof, and claiming that *49 King Arthur Court* was marital property, and also that it was in foreclosure, supposedly for unpaid property taxes, made an oral motion, that the property be sold immediately, and the proceeds divided between the Respondent and myself. *Id.* p. 9. Opposing the motion, I argued, that: (a) by law (26 U.S.C. §104 (a) (2) and DLR § 236 B (1)(d)), *49 King Arthur Court* was my separate property, being that it was purchased, with funds I had received in a personal

injury case, on which I had paid no taxes; (b) I was unaware that the property was in foreclosure or the subject of a foreclosure proceeding, which as I understood it, was a legal prerequisite for foreclosing on property ("PTL §1194"); (c) by law (NYMA § 202.16), in a divorce matter, when there is a dispute as to status of property, the scheduling of discovery is mandatory, to resolve the dispute; (d) by state law (DLR § 236 (B) (5) (a)), in a divorce matter, the disposal of marital property occurred after the entry of *final judgment* and not pretrial or at a preliminary conference, unless the parties settled before trial; (e) that declaring *49 King Arthur Court* marital property was tantamount to retroactively converting the *Settlement*, with which it was purchased, into taxable income, which meant that inevitably, I stood liable for considerable back taxes, and therefore at significant risk of prosecution and incarceration for tax evasion, for failing to pay taxes on the *Settlement* (26 U.S.C. § 7201); etc. *Id.* pp 9 –10.

To these and other arguments I made, the Trial Court commented, "you are not a lawyer and as such are

not qualified to argue points of law with me," whereupon, it denied my request to schedule discovery, and granted Respondent Attorney's motion to sell the property and tasking her with overseeing the sale, adding that, as far as it was concerned, the question of the property was settled, and that there was nothing anyone could do to change its decision. *Id.*

Furthermore, at the request of the Respondent Attorney, the Trial Court extended a previous *Order of Protection* (*Id.*, p. 8), physically barring me from the property - where the *Deed* of the property and the *Settlement Agreement* entered into by the parties in *Osuagwu v. GRMC* (which proves that the award was a *Personal Injury Settlement*, as opposed to income), were located. RBA, p.1. Notably, the Respondent, who continued to reside at the property after I had left, up until it was disposed of, and thus had access to the above-referenced documents, did not produce either one throughout the proceedings, including at trial. *Id.*, p.7.

Subsequent to the above-referenced preliminary conference, I confirmed directly from the County

Tax Office, that contrary to the claim of Respondent Attorney, the property was not and had never been the subject of a foreclosure proceeding, on account of the above-referenced COVID-19 Act. BFA, p.10.

On two occasions following the preliminary conference, Respondent Attorney e-mailed home sale documents on the property to me for signing, one of which was a *Contract of Sale* document that had been deliberately mutilated by having the names of prospective buyers and their attorney erased from it (*Id*, pp. 11 – 14). *See*, GOL § 5-703, p. 11, *supra*.

When I refused to sign the defective document, Respondent Attorney petitioned the Trial Court to empower the Respondent to sign it “on my behalf,” noting in her petition, that the Trial Court had previously “agreed” to authorize the Respondent to sign said papers on my behalf if I refused to sign them. BFA, pp. 11 - 14. Notably, the record of the proceedings will show that I was never present at any session where such a pledge was made, which can only mean that the Trial Court and Respondent Attorney engaged in *ex parte* communication

(CRR 9-587.4, (10), p. 11, *supra*), in reaching such agreement. RBA, p.6. It is also notable that in her appellate brief, Respondent claimed, without citing any part of the record, that the Trial Court had told me that if I did not sign said papers, Respondent would be authorized to sign them on my behalf. REB. p. 44.

On both occasions, without convening a hearing or seeking any input from me, the Trial Court granted Respondent Attorney's petition, by issuing two separate orders (hereinafter referred to as *Orders of Empowerment*), whereon Respondent proceeded to sign my *Name* and *Signature* to the sale documents for the property, including the above-referenced *Contract of Sale* and a *Memorandum of Agreement*. BFA, pp. 11 - 14. In the case of the *Contract of Sale*, she signed a copy that was *not* mutilated. *Id.*

On both occasions, I wrote a letter of protest to the Trial Court, challenging the constitutionality of the *Orders of Empowerment*, but it never responded to my letters. *Id.*

In at least two motions I filed

between the above-referenced preliminary conference and the conclusion of a non-jury trial, I indicated in sworn *affidavits* that I had contacted the IRS and confirmed directly that no income tax was owed on the *Settlement*. *Id*, p.17. Neither Respondent Attorney nor the Trial Court responded to these statements. *Id*.

Significant events that occurred at trial in the case include: (a) I reiterated my argument at the above-referenced preliminary conference, including that *49 King Arthur Court* was my separate property, and that I was unable to present the above-referenced *Settlement Agreement* as proof because it was on the property from which I had been barred by the above-referenced *Restraining Order* (RBA, p. 7), to which the Respondent did not refute, and to which the Trial Court did not order that the Respondent produce the documents, or that I be allowed access to the property to retrieve them; (c) I reiterate my prior position, that the *Orders of Empowerment* were unconstitutional orders, and was berated by the Trial Court for making that assertion, stating, "I ordered it." (*Id*, pp. 16 – 17);

(d) I testified that because I was technically unemployed from 2014 to 2020, by virtue of my being engaged with my startup company, I had not filed any income tax returns for those years (*Id.*); (e) I presented and had admitted into evidence, the above-referenced mutilated *Contract of Sale* document, to indicate that Respondent Attorney violated GOL § 5 – 703 (see, (8), p. 11, *supra*), but the Trial Court indicated that it did not believe there was a violation (*Id.*, p.18); (f) on cross examination, the Respondent claimed that she could not remember if she had declared the *Settlement* or any part of it on her tax returns (*Id.* p. 16); (g) when I attempted to present testimony on the subject of tax, Respondent Attorney objected and was sustained by the Trial Court (*Id.* p. 17).

At the conclusion of trial, on October 22, 2021, the Trial Court in its *Decision*, declared that the *Settlement* was marital income, stating, in clear reference to me (“Mr. Osuagwu”), the Respondent (“Ms. Osuagwu”) and the *Settlement*:

“Mr. Osuagwu ...said he paid no taxes on this settlement, and no one really provided proof

about that. I am not making a finding as to whether he did or did not pay taxes, but what I am going to find is to the extent that are any unpaid taxes due...for any sums on the *personal injury settlement*, Ms. Osuagwu will be indemnified entirely for the payment of those taxes by Mr. Osuagwu who will be solely responsible for payment of those taxes [sic].”

Id. pp. 2 – 3; App C, 20a – 21a.

On October 24, 2021, I filed *Motion to Stay Enforcement of the Sale of 49 King Arthur Court*, (“*Motion to Stay*”), pursuant to CPLR § 5519 and duly alerted Respondent Attorney. BFA, pp. 19 – 20. In response, Respondent Attorney characterized the motion as “meaningless.” *Id.*

On or about, October 25, 2021, completely disregarding the *Motion to Stay*, and before filing an answer or waiting for it to be heard by the Trial Court, Respondent Attorney, with the Respondent and other parties, including the prospective purchasers of the property - Thomas and Yanira Amadeo (“the Amadeos”), their

attorney – one Mr. Arvind Galabaya, the *Amtrust Title Insurance Company* (“*Amtrust*”) and *Home Point Financial Corporation* (the mortgage lender for the Amadeos, hereinafter referred to as *Home Point*), proceeded to complete the sale of the property and transfer title to the Amadeos, which as before involved the Respondent appending my *Signature* and *Name* to closing documents, including a new *Deed*. *Id.*

Subsequently, *Amtrust* recorded and filed the new *Deed* with the County Clerk. *Id.*

On January 3, 2022, the Trial Court entered its *Decision* on the above-referenced *Motion to Stay*, in which it declared the motion moot and denied it, and further, justified the *Orders of Empowerment*, on my “recalcitrance.” *Id.*, p. 22. In that *Decision*, it never addressed the fact that the above-named parties sold the property while my motion to *estop* the sale was pending.

On January 26, 2022, in response to another post-trial motion I had filed - *Motion to Rescind the Sale of 49 King Arthur Court Pending the Outcome of Appeal* (“*Motion to Rescind*”), Respon-

dent argued, among other things, that the *Orders of Empowerment* were tantamount to *Power of Attorney* and were therefore justified.² *Id.* However, as I noted in my appellate brief, it was never determined by the Trial Court or any other court that I lacked to make legal decisions on my own behalf. *Id.* Furthermore, in its subsequent *Decision* on that motion, the Trial Court did not predicate the *Orders of Empowerment* on *Power of Attorney*, but like in the previous one, on my "recalcitrance." *Id.*, p. 31.

Subsequently, I received an IRS Form 1099-S from an attorney representing *Home Point*, indicating taxable income of \$382,500 to me, deriving from sale of the property, but rather

² In the same responsive document – a sworn *Affirmation*, Respondent Attorney stated that *Home Point* was "aware of the circumstances surrounding the sale of the property and had no problem with proceeding with the sale." Also, on more than one occasion, prior to the sale of the property, I contacted the above-referenced Mr. Galabaya and warned him about engaging in the transaction, on account of my signature and name having been placed on the sale documents, against my consent. RBA, p.3

than remit the sum directly to me, *Home Point* forwarded it to Respondent Attorney, who later attempted to remit only \$55,089, and which I refused to accept. *Id.* p. 21; RBA, p. 3.

On November 21, 2024, or thereabouts, I contacted the IRS by phone, for the second time, and on narrating my predicament, was informed that the agency could not remove reported income from its records, but that only the person or entity that had made the report could petition for its removal, and that failing that, I would be responsible for paying the indicated tax or risk prosecution and possibly incarceration. Notably, it was my apprehension over the high probability of incarceration, especially against the strange accounting discrepancy described above, that prompted my filing of *Osuagwu v. Home Point Financial Corporation, et al*, 7:22-CV-03839 (CS) - a 26 U.S.C. §7434 action, in the *U.S. District Court for the Southern District of New York*, invoking among other supporting statutes, the above-referenced NYP §§ 170.10 and 20.20. Unfortunately, that Court, *sua sponte*, dismissed my *Complaint*, mostly on account of

Subject-matter and Diversity Jurisdiction, stating that only this Court has the jurisdiction to review the judgement of a state court, pursuant to 28 U.S.C. § 1257.³

On February 3rd, 2022, the Trial Court entered its *Judgement of Divorce*, reiterating its earlier *Decision* of October 22nd, 2021, including,

³ Eventually, a *Petition for a Writ of Certiorari* was filed with this Court, in connection with that case, by which I sought to appeal the *Summary Order* of the *United States Appeal Court for the Second Circuit*, upholding the findings of the District Court. *See, Osuagwu v. Home Point, et al*, no: 23-428 (the *Osuagwu v. Home Point* petition), published at www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-428.html. Unfortunately, also, that *petition* was denied.

However, even as the District Court declined to hear the case (the *Osuagwu v. Home Point* petition, App, 47a), it acknowledged the above-referenced anomaly, stating: “The Court notes that there appears to be a discrepancy between the amount of the Plaintiff’s [the Petitioner in this *petition*] share from the sale of the property...and what was listed on the IRS Form 1099-S as the proceeds that Plaintiff received from its sale ...” *Id.* 68a.

among other things, that *49 King Arthur Court* was marital property and directing that it be sold. App C. 20a.

On timely appeal to the AD-2, and narrating the foregoing account (and as argued below), I raised, among other questions, the constitutionality of the Trial Court's determination, that *49 King Arthur Court* was marital property, arguing that it had no authority under the law to make a determination on federal taxes, and emphasizing repeatedly, that the *Orders of Empowerment* violated my *Fourteenth Amendment* right and placed me at unfair risk of prosecution and incarceration for tax evasion, etc. *Id.* pp. 26.

The pertinent relief sought on the AD-2 appeal, included: (a) that *49 King Arthur Court* be declared my separate property and its sale an illegal transaction; (b) the voiding and nullification of the new *Deed*, since, it is a *forged* document, by virtue of NYP §§170.10 & 20.20 (*see*, pp. 5 & 6, *supra*); (c) that the Amadeos be ordered to vacate property immediately and that it be restored to me; (d) that *Home Point* be ordered to retract the IRS Form 1099-

S; (e) that *Amtrust* be ordered to withdraw the new *Deed* and to reinstate the previous one; (f) that in the unlikely event the Court did not find that the *Settlement* was indeed marital property, to reverse the Trial Court's findings and judgment, and mandate that should a tax audit ensue, each party should pay half of any taxes or penalty on the *Settlement* (*Id.*); (g) that the Respondent be ordered to restore all of my personal effects which she had disposed of, and in the event she was unable to do so, to levy compensatory damages of not less than \$250,000 (*Id.*).⁴

Notably, in her appellate brief, Respondent, (a) did not argue that NYMA § 202.16 was unconstitutional,

⁴ At some point, while the parties awaited the ruling of the Trial Court on an opposed motion she had filed, seeking to have me remove my personal effects from the property, the Respondent, proceeded to dispose of, or otherwise destroy my personal effects – including rare books and manuscripts, works of art, electronic gadgets, etc., estimated to be worth at least \$300,000. *Id.* pp. 14, 18 – 19. Subsequently, during trial, when I raised this issue with the Trial Court, it said and did nothing. *Id.*

or that any clause in that rule justified the refusal of the Trial Court to schedule discovery when I requested it at the preliminary conference and on several occasions afterward (RBA, pp. 4 – 8); (b) did not cite even one instance in law – state or federal, where it was constitutional that a state court could grant permission to one individual to sign another's *Signature and Name* to legal documents such as home sale documents, purportedly on the latter's behalf, without the consent of the latter and without a properly executed *Power of Attorney*, or reargue her *Power of Attorney* "justification" for the *Orders of Empowerment* (*Id.* pp. 8 – 9); (c) did not cite even one statute or case law, to show that it was within the constitutional discretion or authority of the Trial Court to make a determination on what federal taxes the parties in the dispute were to pay on assumed marital income (*Id.* pp. 13 – 14); (d) expended considerable effort in her brief on what taxes I had or had not paid, never acknowledging that on her own objection, the Trial Court would not allow the issue of taxes to be explored at trial (*Id.*); (e) did not challenge my argument, that

declaring *49 King Arthur Court*. marital property, essentially retroactively imposed accruing taxes, for which I would inevitably be prosecuted and possibly incarcerated for tax evasion or other tax crimes (*Id*, pp. 20 – 21); (f) never disputed, that in determining that I alone bore the burden of possible taxes on the *Settlement*, while she got half the proceeds on the sale of the property purchased with it, the Trial Court violated the clause in the *Fourteenth Amendment*, mandating equal protection of the laws (*Id*); etc.

On July 31, 2024, the AD-2, in its *Decision & Order*, entered without hearing oral arguments, affirmed the elements of the Trial Court's *Judgement of Divorce*, being appealed from, supporting its conclusion with the following statements, among others: (a) that the Trial Court properly determined that the marital residence constituted marital property (App B, 5a); (b) that I had failed to adduce sufficient evidence to overcome the presumption of marital property (*Id*, 6a); (c) that the Respondent did not commit *Forgery*, as she was authorized by the Trial Court to sign

documents on my behalf (*Id*, 6a – 7a); (d) that the Trial Court properly directed that I was solely responsible for payment of any outstanding federal and state income taxes, penalties, fines, or interest due (*Id*, 7a – 8a); (e) that the Respondent had paid her tax liability by filing separate income tax returns, and therefore, the Trial Court properly directed that the I was responsible for any outstanding tax liability while the Respondent was indemnified (*Id*); etc.

In no part of the *Decision & Order* was any attempt made to analyze any of the questions raised in the context of the *Fourteenth Amendment* or any other element of the Constitution, nor did it cite any statute, or case law arising from the NYCA or this Court.

Subsequently, I filed *Notice of Appeal* to appeal the *Decision & Order* of the AD-2 on constitutional grounds, pursuant to New York Consolidated Laws, Civil Practice Laws & Rules § 5061(b)(1), restricting it to the issues of *Denial of Due Process*, *Orders of Empowerment* and tax allocation, since I could not articulate a constitutional basis for challenging the finding of the AD-2 on the other appellate issues –

Child Custody, Attorney's Fees, etc. BFA, pp. iii. Subsequently, Respondent Attorney and I filed *Jurisdictional Responses* as mandated by the rules of the NYCA. The *Attorney-for-the-Child* did not file one.

On October 17, 2024, the NYCA issued an order, stating: "Appellant having appealed to the Court of Appeals in the above title; upon papers filed and due deliberation, it is ORDERED, that the appeal is dismissed without cost, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved." App A, 1a – 2a.

REASONS FOR GRANTING THE WRIT

At this juncture, it must be noted, that had the Trial Court proceeding been like the multitude of other divorce matters that come before state courts every year, I would have been content to put the past behind me, even to forgo any claim on the property, and move on with my life, but given the dire consequences to my person, I am making this last ditch effort to obtain justice, being that I do

not have the resources to pay the heavy taxes (currently estimated at \$2 million, inclusive of accumulating penalties for late payment) on the *Settlement*, resulting from the error of the Trial Court, and hence, now find myself in a very dangerous predicament, and for which I am now beseeching this Court to intervene.

Without question, the conduct of the Trial Court in this matter, especially in issuing the *Orders of Empowerment*, showcases one of the worst instances of abuse of judicial power in all of American judicial history – something that not even the worst outlaw in the society would be subjected to, without provoking outrage. Its sanctioning by the NYCA sets a dangerous precedent, unless this Court acts, as mandated by its duty as the court of last resort, to correct what is clearly a desecration of the Constitution.

Therefore, by virtue of controlling legal and constitutional provisions, and the undisputed facts, cited and narrated above, respectively, there

were both significant *Substantive* and *Procedural Due Process* violations in this matter, to warrant a hearing by the NYCA. Therefore, it was wrong to reject my appeal.

From the narration of the events above, showing that a federal question was properly presented, that the disposition of that question was necessary to the determination of the case, and that the question was actually decided by the NYCA, having determined *erroneously* that "no constitutional question was directed," this case meets the conditions for a review by this Court, in accordance with its findings in *Sw. Bell Tel. Co. v. Oklahoma* and *Raley v. Ohio*, and pursuant to 28 U.S.C. § 1257.

Furthermore, given the novelty of the very important constitutional question raised in this matter, it is imperative, pursuant to Rule 10 (c) of the Court, that a *writ* be granted, so that the question may be settled by this Court, and grievous error corrected.

I argue as following, in support of the foregoing statements:

I. The Ownership and Legal Use of a Person's Signature and Name should be construed as a Property Right, pursuant to the Fourteenth Amendment

It bears repeating, that there is *no* statute or precedent in the entirety of American judicial history, that provides for a court, especially a state court, to empower one individual to sign the *Signature* and / or *Name* of another to 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.

Against the foregoing statement, if the fundamental right to *Privacy* is shielded from the interference of the state (*Meyer v. Nebraska*, etc.), how much more imperative is it that the same regard be accorded to the right of an individual to the *Ownership* and *Use* of his or her own *Signature* and *Name* – concepts that are at the core of the ontological definition of that

person? Indeed, what could be more *fundamental* to a person's being than his *unique identity and identifier* – as implied and represented in his *Signature and Name*? Several factors validate an affirmative answer to each of these obviously self-evident questions.

First, although the *Fourteenth Amendment* or any other aspect of the Constitution does not expressly define a person's *Signature* or *Name*, it must be construed, that there was *prima facie* assumption on the part of the framers, that a fundamental property interest is inherent in a person's *Signature* and *Name*, especially where they are applied to, or used to validate legal matters, and that such interest is *sacrosanct*, such that no one, especially the state – in this case embodied in the Trial Court, would think to violate it. Therefore, there can be no question that a person's *Signature* and *Name* are at the core of his or her *personhood and identity* – the very fundamental right for which the *Fourteenth Amendment* was intended.

Therefore, by mandate of the *Ninth Amendment*, and in accordance

with other determinations made by this Court - *Meyer v. Nebraska*, *Loving v. Virginia*, *Troxel v. Granville*, etc., it should grant my *petition* and examine the unprecedented *Orders* and *Decisions* of the state Trial Court, through the lens of the *Fourteenth Amendment*.

Indeed, as I have argued, *ab initio*, if the Trial Court had ordered the property to sold on the basis of its authority alone, and not mandated that Respondent sign my 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 such was not the case in this matter, and Respondent's futile attempt to rationalize the *Orders of Empowerment* as deriving from *Power of Attorney*, obtained through statutorily prohibited *ex parte* communication, no less, especially as the Trial Court itself never claimed as such, should be offensive to this Court.

Second, even in the improbable event, there was a need to appoint a *Power of Attorney* to make legal decisions on my behalf, it would be unconstitutional to appoint the Resp-

ondent to such a role, especially being that we were adversaries in a legal dispute, and as such neither could be expected to make a decision that was in the best interest of the other, a fact that is recognized even by state law - EPT § 6-2.2(b). *See*, (3), pp. 8 - 9, *supra*.

Third, and expanding on the preceding point, by mandate of EPT § 6 - 22 (b), at the moment the Respondent initiated the divorce proceeding, she and I had "distinct, separately transferable interest" in *49 King Arthur Court*, such that it became unconstitutional for her to sign any documents connected with the property on my behalf, especially as I never granted her *Power of Attorney* to do so, and the Trial Court had no authority as a principal to appoint a *Power of Attorney*, to act on my behalf. *See*, (2), p. 8. *supra*.

Fourth, under any jurisdiction in the United States, *impersonation* of one individual by another, as well as the signing of a person's *Signature* and / or *Name* to legal documents by another, such that the property interests of the former are adversely affected are criminal offences,

pursuant to the various state *Impersonation, Forgery and Fraud* statutes, which logically must make them unconstitutional also. Hence, in my pleadings throughout, given the absence of contemporary justifying statute and precedent, I have maintained that the only legitimate provision that applies to the *Orders of Empowerment*, is the felony crime of *Forgery*, as defined by NYP §§ 170.10 and 20.00 (BFA, pp. 29 - 34), of which, thus far, neither the Respondent nor the Trial Court nor the AD-2, has been able to show otherwise. Furthermore, parsing the conclusion of the AD-2 - that the Respondent did not commit *Forgery* because the Trial Court authorized her to sign my signature to legal documents "on my behalf," if a court or any other entity acting under *Color of Law*, grants permission to a party in a legal dispute to break into the home of the adversarial party, to remove an item that is in contention before it, does that make the act any less a *Burglary*? Is it American that the power of a state court should be so absolute, *vis-à-vis* the constitutional rights of the individual, as

New York courts have implied in this?

Fifth, as noted *ad nauseum* above, the Trial Court, by transforming what should rightfully be my untaxed personal asset, into a retroactively taxable marital income, before such determination has been made by a United States District Court or New York state tax tribunal, and despite admitting that it lacked the requisite knowledge to make such a determination, not only violated 26 U.S.C. § 104 (a) (2), DRL § 236 (B) (1)(d), and other applicable statutes, which mandate the protection of the *Fourteenth Amendment* to me, but cruelly and unfairly condemned me to inevitable incarceration for tax evasion, as provided by 26 U.S.C. § 7201, thereby, not only depriving me of property without *Due Process of Law* but endangering my liberty as well. Surely, if the *Fourteenth Amendment* must be interpreted in the spirit in which it was intended, this action by the Trial Court must be construed as a violation, pursuant to the unequivocal mandate – “No State shall ... deprive any person of ... liberty... without due process of law.”

Sixth, is the issue of potential litigation arising from the sale of the property or other matters connected with it. Hence, the inevitable question arises: is it fair that I am held liable for any potential injury that may arise from the sale of the property, being that I am represented on record, as having signed my name to that transaction, when in fact, I did not? Also, unless the Court disagrees with the definition of the *Signature* by the *Black Law Dictionary* (p. 7, *supra*), in the event of litigation, would it be fair to attribute the *Signature* on the documents that enabled the sale of *49 King Arthur Court* to me, or give it validity as my own act?

Seventh, there is no statute or precedent, under New York or federal law, or the Constitution which recognizes "Recalcitrance" as a basis for the Trial Court to authorize the Respondent to *impersonate* me in a real estate or any other legal transaction, or to sign my name to legal documents. Such conduct, not only violates the *Fourteenth Amendment*, but also the very oath that the Trial Court took as a judge to uphold

the laws of the state of New York and the United States, as opposed to making its own law.

And so forth.

From the foregoing analysis therefore, and as this Court must no doubt agree, it would be unequivocally antithetical to its intent and purpose, that the Constitution could possibly sanction that one person should *usurp* the *identity* of another – the very essence of *personhood* and *individuality*, whether empowered to do so by a state court or not, unless we are back to the era of *Slavery*, that is - where some individuals were *legally* considered properties of others, devoid of inherent rights in their own person.

Hence, irrespective of any other factor, at the very least, an individual's *Signature* and *Name*, at least for purposes of legal matters, must be construed as *Property* – a fundamental right that the government cannot infringe upon *under any circumstances* – even in a matrimonial matter, much like the right to *Privacy* – which was rightfully validated by this Court in *Meyer v.*

Nebraska and Pierce v. Society of Sisters.

II. The *Affirmation* of the Trial Court's *Orders* and *Decisions* by the Appellate Division of the New York State Supreme Court and the New York Court of Appeals, is not only *Unconstitutional*, it sets a *Dangerous Precedent also*

In addition to violation of *Substantive Due Process* – as articulated above, the Trial Court was also in violation of *Procedural Due Process*, contrary to the mandate of the *Fourteenth Amendment*.

Therefore, realleging the foregoing reason, and as the following argument will show, given the egregious nature of these violations and the consequences deriving therefrom, including penalty for tax crimes that exist only as a result of the injustice to which I have been subjected, allowing the *Orders* and *Decisions* of the Trial Court to stand, such that litigants will no doubt be encouraged to violate the

law, and cite the *Orders* as justification, would be inimical to the spirit and intent of the Constitution of the United States.

First, implied in the *Fourteenth Amendment*, is strict adherence to the statutes and rules that guide the process of litigation in every state of the union, including New York, thus ensuring and enabling *Due Process*. These rules and statutes, including the above-referenced NY Const, Art. I, § 11, NYMA § 202.16, DLR § 236 (B) (5) (a), CRR 9-587.4 and CPLR § 5519, must be followed mandatorily in the course of any judicial proceeding, rather than being applied at the discretion of the courts. The NYCA itself, in *Kahn* (cited on p. 10, *supra*) affirmed the absoluteness of adherence to these rules and statutes, thereby affirming the mandate of the *Fourteenth Amendment*. *See also*, *People v. David W* (p. 8, *supra*), Therefore, when, among other *Decisions* and *Orders*, the Trial Court deliberately refused to schedule discovery to ascertain the status of *49 King Arthur Court*, and prematurely

disposed of property in dispute, contrary to state law, it violated my *Fourteenth Amendment* right to *Due Process*.

Second, as implied in the *Fifth*, *Eight* and *Fourteenth Amendments*, and unanimously recognized in our judicial system, a citizen is innocent until proven guilty, and only after the requisite application of *Due Process*, and so far, neither the U.S. District Court nor the New York State Tax Tribunal – the respective jurisdictions for tax matters, has determined that I have failed to pay due taxes, or committed any tax crime. Therefore, if the determination of the Trial Court stands, I would in effect have been found guilty of a tax offence by a court that has no jurisdiction to make such a finding. Therefore, by virtue of 26 U.S.C. § 7402 and the NYTL - 40 (p. 12, *supra*), the Trial Court had no subject-matter jurisdiction to allocate taxes to any party in this matter, and therefore its action was unconstitutional, especially as that determination was made as part of an overall conduct by which I was denied *Due*

Process, prior to my being deprived of property.

Third, by mandating that while Respondent was entitled to half the *Settlement*, supposedly, by virtue of it being “marital property,” but that I alone bore the full burden of taxes of \$2 million, the Trial Court violated a cardinal element of the *Fourteenth Amendment* - “...the equal protection under the laws,” especially given the undisputed fact that during the marriage, the Respondent prioritized her extended, over her nuclear family, so much so that she refused to spend her income even on her own children. *See, ¶ 1. p. 14, supra.*

Fourth, in its *Decision & Order*, the AD-2, in complete disregard for the facts of this matter, erred when it stated, among other things that the Trial Court properly directed that I alone was responsible for unpaid federal and state income taxes, penalties, fines, interest due, etc., when, in fact, the Trial Court refused to allow the issue of taxes to be explored at trial. Also, its statement,

implying that the Respondent had paid her portion of taxes on the *Settlement*, is clearly not reflective of the essential facts of this matter or the impartial application of law, and hence constitutes a violation of “equal protection under the laws.” How indeed, could the Respondent have “...paid her tax liability by filing separate income tax returns...” on the *Settlement* when she never declared it on her tax returns in the first place? *See*, ¶2, p. 15, *supra*. Hence, as I argued in my appellate brief, there can be only one of two explanations for this failure: either the Respondent knew that the *Settlement* was not marital property (in which case, it was unconstitutional for her Trial Court to allocate it, or any portion of it, to her), or she lied in her tax returns – neither scenario of which favors her position or justifies the findings of the Trial Court. BFA. p. 37.

Therefore, the relevant issue here is not whether I paid or did not pay income taxes for several years, but whether the Respondent and / or myself should have paid income tax on the *Settlement* with which the property

at issue was purchased, and if we did not – as was the case in this matter, what that means in the context of marital, as opposed to separate property, pursuant to applicable law.

Fifth, just as with the above-referenced 26 U.S.C, §104 (a) (2), there are other provisions in law whereby an individual is excused from filing income tax returns, including when such an individual has no paying employment, as was the case between 2014 and 2020, when I founded my startup company and sought to launch it, which would explain why the Respondent, who was employed at the time, filed her own taxes as *Married, Filing Single*. Perhaps, if discovery had been performed, as mandated by state *Due Process* law, the Trial Court would not have determined that 49 *King Arthur Court* was marital property, and not authorized the Respondent to *impersonate* me in a legal transaction, or to *forge* my *Signature* to legal documents, in clear violation of state law, in order to enable a claim to an asset, to which she is not legally entitled.

Sixth, the Trial Court itself, by its own statement, indicating that it could not ascertain if taxes had been paid on the *Settlement* or not, even in the unlikely scenario that it had subject-matter jurisdiction, admitted that it had insufficient facts to make an equitable determination on the issue, but nevertheless proceeded to make one anyway! Clearly, such conduct cannot be concordant with the *Rule of Law* or the Constitution.

Therefore, as in the above-cited *Mathews v. Eldridge*, where the Court affirmed the right to *Procedural Due Process*, it should grant this *petition* and once more uphold and validate the Constitution. Otherwise, it would essentially be saying, as the state of New York has already declared, through its highest court – the NYCA – that I, a citizen of these United States, am exempt from the protection of the *Fourteenth Amendment*, even as my very freedom hangs in jeopardy.

CONCLUSION

From the foregoing, my petition should be granted.

Alternatively, given the undisputed facts and the egregious constitutional violations, the Court should, pursuant to Rule 16.1, enter a *Summary Order*, overturning the Trial Court, on the portions of the *Judgment of Divorce* being appealed from - to include the voiding of the *Orders of Empowerment* and therefore the sale of *49 King Arthur Court*, on the basis of unconstitutionality, the immediate retraction of the above-referenced IRS Form 1099-S and the new *Deed*, by *Home Point* and *Amtrust* respectively, and remanding the matter for retrial on those portions.

All other relief as the Court may deem just and proper.

Respectfully submitted.



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