No. 24-633

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Matthew Ryan McCurley,

Petitioner,

v.

Wells Fargo Bank NA,
U.S. Department of Housing and Urban Development,
Arseni Zaitsev, Randall Alonso Mangham, et. al.

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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Petitioner

QUESTION PRESENTED

Regarding the defendant's own language in the below linked Conciliation Agreement between US Department of Housing and Urban Development and Wells Fargo, N.A. - https://www.hud.gov/sites/documents/HUDVWFCONCILIATION.PDF (U.S. District Court (USDC) Doc 24 – Pg 80 and Pg 86, Exhibit 1 of the District Court filing):

> "A cash offer from an investor or nonprofit organization to purchase an REO property shall not be considered a better offer if the offer is for the same or a lesser amount than an offer by an owner occupant who is purchasing the REO property with cash or with financing."
>
> AND
>
> Consequences of Breach
> "The parties understand that if HUD has reasonable cause to believe that Respondent has breached this Agreement, the matter may be referred to the Attorney General of the United States to commence a civil action in the appropriate U.S. District Court, pursuant to 810(c) and 814(b)(2) of the Act"

The forms put in place for auction participants to comply with the guidelines of the public conciliation agreement mentioned above based on federal law and the documents Wells Fargo and HUD submit to citizens, customers and bidders read:

> "The undersigned understands that any misrepresentations made on this form as to the agreed to provisions may be subject to criminal and/or civil penalties including, but not limited to, fine or imprisonment, or both, under the provisions of Title 18, United States Code, Sections 1001 and 1010."
>
> "Respondent acknowledges that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act and that any such act of retaliation constitutes a material breach of this Agreement and a violation of the Act." - 2013 Conciliation Agreement Paragraph 16, (USDC Doc 24 – Pg 76, Exhibit 1)

Question: whether the signing of Form HUD-9548, (Wells Fargo's version being the "Owner Occupancy Certification Form" stating "criminal and/or civil liability") establishes privity and the failure to supply a form/contract is a violation of Fair Housing Act (FHA).

Quoting the Supreme Court:

> "Since lending and housing policies are deeply interconnected with "economic and social life," the Court said that "[a] violation of the FHA may ... 'be expected to cause ripples of harm to flow' far beyond the defendant's misconduct." Id. (quoting *Assoc. Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 534, 103 S.Ct. 897, 74 L.Ed.2d 723 (1983))"
>
> https://www.supremecourt.gov/opinions/16pdf/15-1111_5i36.pdf

A central exception to the requirement of privity is that an intended third-party beneficiary can sue for breach of contract. In other words, the requirement of Wells Fargo and HUDs duty to enforce Wells Fargo's agreement is that prospective buyers agree in writing and or receive a form to sign which complies with the agreement. In this point alone, the case should be reversed in part not withstanding other aspects of law such as the bid-rigging that was clearly and factually supported with empirical evidence and could have easily been decided correctly in the lower court. My understanding as plaintiff is that Certiorari comes from a Latin phrase that means "to be more fully informed" as such informing the Court expeditiously about related decisions such as *Bank of America Corp. Et Al. v. City of Miami, Florida*, The Supreme Court has communicated with the 11th Circuit and ruled that cities can sue banks, all else being equal, this should logically imply that individuals can bring actions against banks as well. The City of Miami filed suit against Bank of

America and Wells Fargo and permitted any "aggrieved person" civil damages. This case only differs in that further specific and detailed auction requirements were contractually required of the defendants in the transaction of real estate and both fraud and bid-rigging were involved in the violation of those contracts which arise from the Act. Similarly, The US Court of Appeals for the Fourth Circuit held in *United States v. Brewbaker*, that the government failed to allege all elements of a per se bid-rigging offense in violation of Section 1 of the Sherman Act. The court reversed the defendant's Sherman Act conviction, though affirmed the convictions for mail and wire fraud. Jodi Kness, Wells Fargo's employee responsible among others for the compliance with this program has stated to the Plaintiff on a lawfully recorded phone call "you are absolutely one thousand percent correct" (lawfully recorded) (USDC Doc 24 – Pg 17). As such I respectfully asked for a FRAP Rule 60 motion hearing (timely filed within the year, or to vacate and Order a resolution or summary judgement, the court did not oblige. Plaintiff retained Mangham. Mangham submitted a letter with facts to Wells Fargo. What more was or was not completed by counsel is unknown to Plaintiff. "Ineffective assistance of counsel claims present mixed questions of law and fact, which we review de novo. *Osley v. United States*, 751 F.3d 1214, 1222 (11th Cir. 2014).

> "Since lending and housing policies are deeply interconnected with "economic and social life," the Court said that "[a] violation of the FHA may ... 'be expected to cause ripples of harm to flow' far beyond the defendant's misconduct." Id. (quoting *Assoc. Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 534, 103 S.Ct. 897, 74 L.Ed.2d 723 (1983))"
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Plain error exists "where the error was obvious and prejudicial and require[s] action by their viewing court in the interests of justice." *Ivey v. Wilson*, 832 F.2d 950, 955 (6th Cir. 1987).

LIST OF PARTIES TO THE CASE

The petitioner was the appellant in the court of appeals, Plaintiff Matthew Ryan McCurley. Respondents were appellees in the court of appeals. They were Wells Fargo Bank NA, Arseni Zaitsev, U.S. Department of Housing and Urban Development, and Randal Alonso Mangham. Their respective counsels were Arthur A. Ebbs (for Wells Fargo NA), Nikil Erramilli and David Glustrom (for Arseni Zaitsev), Daniel Kaplan (General Counsel for US Dept. of HUD), and Randal Alonso Mangham (for himself). District Judge of Northern District of Georgia, Atlanta was Sarah E. Geraghty. Other parties named, were Atlanta Communities Real Estate Brokerage, LLC, Wayne Flanagan and Thompson Hatfield both of Atlanta Communities Real Estate Brokerage.

RELATED PROCEEDINGS

The following proceedings related to the case as it pertains to Rule 14.1(b)(iii): On December 19, 2022, Plaintiff Matthew Ryan McCurley filed a Civil Action Complaint (USDC Doc 1) with the District Court of Northern Georgia. The named Defendants: Wells Fargo Bank N.A., Housing of Urban Development (HUD), and Arseni Zaitsev breached duty and law when the real estate parcel known as 559 Pryor Street SW Atlanta, GA 30312 was conveyed to Arseni Zaitsev. Defendant Zaitsev, at the time an investor, transacted for less than non-investor Matthew

McCurley's offer during the "First Look Program" and/or "Priority Homebuyer/ Homeowner Period" violating the Conciliation Agreement between HUD & Wells Fargo Bank, N.A. (USDC Doc 24 – Pg 73-89). A timed auction with rules directed by HUD.

On December 22, 2022, Judge Geraghty issued a Standing Order Regarding Civil Litigation (USDC Doc 2) which notes that "prior to filing the Joint Preliminary Report and Discovery Plan, lead counsel for all parties are required to confer in an effort to settle the case, discuss discovery, limit issues, and discuss other matters." Plaintiff McCurley followed the Judge's Order by contacting Wells Fargo's Counsel Arthur A. Ebbs to discuss this process and no defendant Counsel replied as directed by the Court and yet was not Sanctioned by the Court for the lack of response and cooperation.

Due to the lack of response, on April 10, 2023, Plaintiff McCurley filed a Preliminary Report and Discovery Plan (USDC Doc 12) and Initial Disclosure (USDC Doc 14). The Plaintiff's information and research was thereby disclosed and such disclosures that were required of the defendants were not enforced, and no sanction incurred for defendants. So, concealment continued and FRCP Rule 1 violated by prolonging a dispute of complaint that could otherwise be resolved.

With no response from Defendants, Arseni Zaitsev and HUD, Plaintiff McCurley filed a Motion to Compel Discovery and Scheduling of FRCP Rule 26 (USDC Doc 13). The court erred in denying motion(s) to compel discovery and in identifying the sufficiency of the facts available for review.

On July 21, 2023, Judge Geraghty granted Plaintiff McCurley to file an amended complaint within 21 days of the order to remedy the problems described herein with respect to his original complaint. Plaintiff McCurley filed the Amended Complaint to the court on August 11, 2023 (USDC Doc 24).

On August 9, 2023, a second Summons was issued to the District Court as to Arseni Zaitsev (USDC Doc 18), Wells Fargo Bank, N.A. (USDC Doc 19), U.S. Department of Housing and Urban Development (HUD) (USDC Doc 20), and Randal Alonso Mangham (USDC Doc 21). On August 10, 2023, Proof of Service by Process Server Herbert Giles of H & L Legal Services, LLC as to Wells Fargo Bank N.A. (USDC Doc 22) and HUD (USDC Doc 23) and filed to the District Court on August 11, 2023 with Court noting that answer to be due by August 31, 2023, no answer has been made. After multiple attempts, Herbert Giles of H&L Legal Services, LLC was able to serve Arseni Zaitsev on August 18, 2023 at his primary listed residence, 504 Morgan Street, NE Atlanta, GA 30303 and filed to the District Court on August 21, 2023 (USDC Doc 25), with the Court noting answer to be due by September 9, 2023. No answer has been made. There were several attempts of process of service by process server, Herbert Giles as to Randal Mangham at his office.

The United States District Court of Northern Georgia, Atlanta Division had jurisdiction of the case, Civil Action Case No. 1:22-CV-04976-SEG that is docketed as pursuant to 28 U.S.C. § 1331 and entered into Federal Court pursuant to 28

U.S.C. § 1441. The District Court entered final judgment against Plaintiff, Matthew McCurley, as to all claims on December 29, 2023 (USDC Doc 37 and USDC Doc 38).

On January 22, 2024, McCurley filed a timely notice of appeal. McCurley timely filed his Appellant's Opening Brief on March 1, 2024 within the 40 days after the date on which the record was deemed filed as provided by 11th Cir. R. 12-1. The U.S. Court of Appeals for the Eleventh Circuit affirmed the District Court's judgment on August 19, 2024. Petitioner, Matthew McCurley is timely filing the Petition for a Writ of Certiorari in pursuant of Rule 13(1) by filing within 90 days after entry of the judgment with the Clerk.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Matthew McCurley respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit. A first-time homebuyer's decision to purchase a home is likely one of the most consequential decisions of a U.S. citizens' life particularly due to the aggregate use of leverage (credit and lending) during this time in human history and the asset class, housing. As such, an agreement between the United States Housing and Urban Development (HUD) and one of the largest national banks, namely Wells Fargo which was unquestionably in place during the time of the auction of 559 Pryor Street SW Atlanta, GA (and other properties) is valid, enforceable and was signed by each party (both representatives of Wells Fargo and Housing and Urban Development) and enforceable upon those parties which enter into the auction of foreclosed (real estate owned) homes within the oversight of these two parties. These parties are defendants in the lawful civil filing related to their employees and representatives signing a 2013 conciliation agreement which is publicly available on the HUD website and on the Wells Fargo website (known as the priority homebuyer program). Plaintiff Matthew McCurley was a bona fide first-time homebuyer bidder in the auction of this parcel in Atlanta, GA Fulton County, United States and Arseni Zaitsev was a real estate investor with other parcels within the same city and county. Plaintiff Matthew McCurley provided proof of a higher offer as a bona fide first-time homebuyer and yet the property was sold to Arseni Zaitsev in violation of the conciliation agreement that Wells Fargo

and HUD agreed to and extended to the public in their writings and publishing under authorities provided to HUD under federal law, such provisions upheld by the Supreme Court in similar cases. HUD representative Sara Pratt and other HUD and Wells Fargo employees are lawfully on record stating this is a violation of the conciliation agreement and not the intent of the law, agreement, program and policy. This matter is consequential before the Supreme Court as it relates to the aggregate research, understanding, work and agreements of multiple housing organizations throughout the country and also to the compliant employees of two large organizations namely HUD and Wells Fargo, both of which have payrolls of employees which number in the thousands of U.S. Citizens and whose actions influence the lives of millions of U.S. citizens, customers, and other residents and non-residents. This matter is timely before the court, of national consequence, has broad societal impact and other Federal appeals courts have reached decisions which conflict with this lower Courts decision necessitating the review. The case meets the threshold of imperative public importance insofar as it relates to the housing of United States citizens, the lawful compliance of a national bank with federal agency agreements and the fair dealing practices of the 11th Circuit's decision making and uniformity and conformity with norms and stare decisis where rational; particularly once it is revealed and referenced in the case and made known to the educated reader and justice.

JURISDICTIONAL STATEMENT

Petitioner's 11th Circuit Appeals Court reversal request and review was strangely unsuccessful before the Court. Matthew McCurley (Plaintiff) invokes the Supreme Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Appeals Court's judgment on August 19, 2024 (US Court of Appeals Eleventh Circuit (USCA11) Doc 34). I hereby also respectfully request the Court consider any and all constitutional, Federal and state laws mentioned in the enforcement of the filing as well as case precedence even if such is not mentioned herein but is within their training and wisdom and capabilities upon review.

STATEMENT OF THE CASE

This Writ is not frivolous and generally interpreted, concerns more citizens than myself in respect to the enforcement of a federal law conciliation agreements and FHA/HUD rules specifically. The precedence is consequential insofar as the agreement between the defendants (Wells Fargo and HUDs agreement and representations to the public), which has not been lawfully enforced by the Courts or authorities (Wells Fargo and HUD) in a self-regulatory capacity or in the lower Court despite clear evidence and factual data, even from the defendant's own employees. By the defendants own written policies, agreements and contracts with each other and the public the matter has "civil and/or criminal" consequences "under the provisions of Title 18, United States Code, Sections 1001 and 1010," (USDC Doc 24 – Pg 91-92, Exhibit 3 of the amended complaint filings), as enforced

by the defendant (Wells Fargo's) own language and extension of their capacity to engage in contracts and agreements and to HUD's ability to enforce compliance with federal laws.

There has been no trial or discovery of fact despite motions from Plaintiff Matthew Ryan McCurley. There was no pretrial, conference or normal process held despite Plaintiff's communication and preparation. There has been no cooperation from Defendants who were lawfully served and failed to plea. The Court failed to sanction the parties according to FRCP Rule 37(3)(4) for failing to comply with Discovery. The Appeals Court erred in ignoring the facts that a breach of a conciliation agreement occurred requiring de novo review and mixed questions of law and fact, which began with Arseni Zaitsev's fraud and the ongoing concealment of fraud by all defendants even those lawfully tasked with enforcement acting in the color of law, which prevents the tolling of the statute of limitations. The Appeals Court erred in wrongfully declaring that Plaintiff had not given defendants adequate and particularized notice. The said parties violated federal and state laws which are listed within the initial complaint and the amended complaint and the grid visualization in the appendix herein below. The Appeals Court erred by ignoring that bid rigging occurred, and that the collaboration amounted to a RICO violation. FRCP Rule 1, "just, speedy, and inexpensive determination of every action" being the obligation of the Court, not a dismissal that prevents a lawful summary judgement and the necessity of an Appeal which prevents just, speedy and inexpensive determination.

A "Civil Cover Sheet" lawfully completed does indicate and lawfully files cause of actions in the selection matrix and the associated summary and exhibits, including, Exhibit 1, HUD/Wells Fargo Conciliation Agreement 2013 (USDC Doc 24 – Pg 73-89), do detail among other violations and fact-based cause of actions and violation of the following: Chapter 186-2 GEORGIA FAIR HOUSING LAW (Stemming from Federal Fair Housing Law) Violations from "public agreement." Price fixing, bid rigging, and other forms of collusion are illegal and are subject to criminal prosecution by the Antitrust Division of the United States Department of Justice. When a legitimate bona fide bidder is disadvantaged in an auction, particularly one which has criteria set and enforced by a federal government agency, there must be a civil resolution. Before the fraudulent sale of 559 Pryor Street SW Atlanta, GA 30301, Arseni Zaitsev's name is found in the Fulton County Property Records on Parcel ID 14 004700031506, which the records show is street address 504 Morgan Street NE Atlanta, GA (USDC Doc 24 – Pg 134 and USDC Doc 24-1 – Pg 36-38), which is a property valued at more than one million dollars by automated valuation systems today. Damages arise from this measuring the value of the loss and opportunity costs, completing the requirements of these elements of the negligence claim while also combining the fact that Plaintiff engaged and pre-paid attorney Randall Mangham during the 3-year period after this claim. Plaintiff continually and constantly wrote defendants, Wells Fargo and HUD and other authorities and lobbied government. This property has been continuously owned by Arseni Zaitsev before, during and after the time which he signed an owner

occupancy certification form according to Wells Fargo employee, Rosie Flores Madrano's description signing as a "first time homebuyer" (USDC Doc 24 – Pg 160, Exhibit 9) which is lawfully recorded in the state of Georgia and admissible evidence and can be independently certified. [1] Arseni Zaitsev was also the owner of record of 261 Powell Street Atlanta, GA Parcel number 14002000100815, also in Fulton County which is a duplex property held in his name before, during and after the 559 Pryor Street transaction which required the signature of an owner occupant and by the agent and Wells Fargo employee's language first time home buyer, neither of which Zaitsev is or was and in fact, he was and is an investor unable to legally obtain priority in the program. So, it is obvious that once Zaitsev was allowed to illegally acquire 559 Pryor Street SW Atlanta, GA, he had at least three (3) multifamily (multi-unit) properties in his name, so he was an investor and not owner occupant before the transaction, during the transaction, and after the transaction, and Wells Fargo Bank not only ignored performing the due diligence but facilitated (and I am quoting the defendant's language from the HUD forms) "civil and criminal liability".

This investor (Arseni Zaitsev), self-published on his public LinkedIn page (USDC Doc 24 – Pg 135-137, Exhibit 6), describes himself as a Real Estate Investor (concealed this during auction) and knowingly and willingly committed the act collaborating in the bid rigging with other signatories and the asset managers who

[1] In Sherman Antitrust Act, 15 U.S. Code § 1 violations and similar criminal collusive activities victims of bid-rigging and price-fixing conspiracies also may seek civil recovery of up to three times the amount of damages suffered.

did not stop the sale with their superiors, and the closing attorney necessary by Georgia Law and Federal law by participating in the oath required of those administering the conciliation agreements and requirements, all of which, knowingly and willfully violated the agreement and Fair Housing Act (FHA), rubber stamping the bid rigging and thereby violating RICO statutes and predicates by allowing, aiding and abetting the known fraud. Plaintiff's offer language is included in Wayne Flanagan's (USDC Doc 24 – Pg 101-132, Exhibit 4) email. In Exhibit 8 (USDC Doc 24 – Pg 140), Attorney Randall Mangham's email referencing HUD signatory Sara Pratt in her recorded statement about this "breach" of the conciliation agreement. In Exhibit 9 (USDC Doc 24 – Pg 141-160), Wells Fargo Board Communications and CEO email detailing the breach of conciliation agreement and law (before the statute of limitations). Call detail records and recorded calls of agents and employees of defendants Wells Fargo and HUD have been made available to those defendants to resolve the issue in nearly real time as these occurred and certainly before the closing of the transaction. The fact of the concealment is made plain in a Wells Fargo employee message to the OCC (Office of the Comptroller of the Currency). In response to OCC Case # 03079235 Wells Fargo states "The bank disagrees with your assessment that it violated the conciliation agreement since it has no record of you submitting a written offer to purchase the subject property" Yet in CFPB Consumer Financial Protection Bureau case number(s) 160609-002104 and 160525-000586, Wells Fargo attaches a copy (an incomplete copy I should add) of one offer that I submitted, the one submitted

during the priority home buyer period. Demonstrating two different Wells Fargo employees responding to OCC and CFPB complaints have two different sets of information that cannot possibly both be true. Therefore, there has been no factual consistency in the record from Wells Fargo, and despite that, consistency from the Plaintiff regarding the timeline of facts. The details of the proposed 522 142nd St, New York, NY 10031 property bid and transaction remain to be discovered (District Court again disallowing the collection of evidence after reasonable cause standard of FHA bidding conditions) and there is also reasonable cause to believe that property was sold to an investor instead of a prospective owner occupant such as myself as in the Exhibit 4 emails to Tyler Smith (USDC Doc 24 – Pg 132) demonstrate wherein I (Plaintiff) asked for a construction loan in compliance with the provision to allow a financed offer from a then clearly known first time home buyer (myself) attempting to purchase a property in the same auction process using the same rules but with a different property, again the result unsuccessful. Patterns of exclusion are based on the same set of rules. I bid on multiple properties over the course of years at the same price per square foot as properties that were missed and never transacted on a property unlike the developers that were shown favoritism against law and against stated policy and agreements and federal agency oversight.

When Wells Fargo, Wells Fargo employees, relevant signatories to the "public agreement," i.e. government employees acknowledge there is an issue, a problem, a concern, enforcement is clearly required. However, action was prevented by one or more senior Wells Fargo employees while other senior Wells Fargo employees claim

to be actively involved in a resolution. (USDC Doc 24 – Pg 5) Specifically construed and factually supported, Matthew Ryan McCurley's claim and clarification is that Arseni Zaitsev, a trained investor and architect with multiple parcels already owned in his name in Fulton County (potentially more parcels to be discovered), and according to lawfully recorded statements of Rosie Flores Madrano, (an employee of Wells Fargo Bank), signed (fraudulently) an owner occupancy certification form which must also be signed by the listing and buyer's agent(s), both having contractual relationships in this case to Wells Fargo Bank and Zaitsev respectively. The "Premier Asset Services – Owner Occupancy Certification Form" (USDC Doc 24 – Pg 91, Exhibit 3) produced by Wells Fargo states "I agree and understand that any misstatement or misrepresentation in this Owner Occupancy Certification Form will constitute a breach by me of the contract for purchase". The Form HUD-9548 Sales Contract Individual Owner Occupant, Exclusive Listing Period Form (USDC Doc 24 – Pg 92, Exhibit 3) which the Wells Fargo Form is modeled on similar asks the Owner Occupant (non-investor) Buyer and the Selling Broker to certify "subject to" "criminal and or civil penalties including but not limited to fine, or imprisonment, of both, under provisions of Title 18, United States Code, Sections 1001 and 1010". In no uncertain terms are the listed defendants Arseni Zaitsev and the Listing Brokers (who are members of Atlanta Communities Real Estate Brokerage) and or any other agent or representative of Wells Fargo Bank or Arseni Zaitsev who signed the above form(s), guilty of civil and criminal acts, both knowingly and willingly. (USDC Doc 24 – Pg 5).

In *Dean v. Barber*, 951 F.2d 1210, 1215-16 (11th Cir. 1992), the Court held that a pro se litigant—to whom courts are required to give particular leeway in pleading, see *Alba v. Montford,* 517 F.3d 1249, 1252 (11th Cir. 2008)— "it is the opinion of this court that binding precedent does not foreclose the possibility of recognizing an exception, as has been approved in other Circuits, allowing a plaintiff to name ... party defendants where discovery is needed to determine the identity of such persons. In addition, the court recognizes that a plaintiff may properly seek early discovery pursuant to Rule 26(d), prior to the completion of the Rule 26(f) conference by court order, and the situation in which a plaintiff is unable to name any defendant without such discovery appears to be a valid situation in which such relief might be granted." *Quad Int'l, Inc. v. Doe*, CIVIL ACTION No. 12-675-N (S.D. Ala. Jan. 7, 2013) among other cases. (USDC Doc 24 – Pg 6-8)

Further I have listed the names of those Wells Fargo employees which have been furnished the facts of these matters and chose (or had their superiors choose for them) to allow a fraud to persist and to perpetuate that on the Plaintiff, the public and the public Agencies (HUD, CFPB, Federal Reserve, OCC, and other sanctioning Agencies tasked with oversight functions of banking entities and their employees and law). It should be provided as Courts have allowed above for these employees to take an oath under and during the discovery process or before and state the truth, and or minimally allow me to accurately quote these named defendants as I do in the exhibits and chronology attached here such that all Defendants including those directly responsible for the asset(s), homes, lawful

compliance and supervision of lawful compliance with the FHA and the other cited causes of action, Federal and State Law and Agreements which are the manifestation of law in HUDs duty and Agency. Defendants can be listed in a manner which clearly indicates that they are either a known violator of law within their duties and obligations or a cooperative and lawful observer and felt that the power to take action was somehow not their responsibility (in example, incompetent, negligent and therefore ineffective) yet with knowledge, otherwise cooperative in crime and civil liability in their duties unless and until discovered that they may have written to their superiors informing them of facts and actions necessary. I will show there were directed and willful attempts to conceal from Federal Agencies, Congress, and even now as the Defendants do not cooperate with the Judicial branch or in the instance of the Investor(s) masquerading fraudulently as a "first time home buyer" according to Wells Fargo's own employees on a lawfully recorded phone conversation that to this day of writing their own employee's and Counsel conceal from the Court and the public.[2] Wells Fargo's listing agent and others who knowingly and willfully violated the law on the forms which indicate or are supposed to indicate civil and criminal consequences as referenced above. The language which I had to write in my own words because the form was intentionally kept from me by the listing agent (Wayne Flanagan) in the 559 Pryor Street instance while provided in the other transactions (fraudulent collaboration and

[2] Let me be clear, the many employees who took the right path, stance, perspective and action should be applauded and celebrated by both management, customers, citizens, the same of public sector employees. However, one must examine the end result and see that the objective here for Wells Fargo has been to not acknowledge the facts in the public records.

schemes with only a shifting obligation across parties). (USDC Doc 24 – Pg 8-9) Reviewing specific known facts in a chain of responsibility: Intermediaries avoided verbal inquiries and did not comply with the provisions of law and public agreement, specifically in Wells Fargo printed policy which is a part of the case filing. Wells Fargo employees attest: "all offers are from first time home buyers". We know that not to be true in fact by a cursory cross reference of Arseni Zaitsev's name in the Fulton County Property Records. We know by my emails (in the case filing and Exhibit 4) and audio recordings that Wayne Flanagan, Thompson Hatfield and the brokerage that Wells Fargo appointed to handle the auction thereby engaged in above unlawful acts (bid-rigging under one name or another by one or more parties and known to Wells Fargo before legal closing of the property transaction which in Georgia requires an attorney by law). We have confirmation of these details by the emails of Wells Fargo asset manager Tyler Smith. HUD signatories in the Federal Government capacity acknowledged the same "breach" yet public action from HUD has not observed unless in the form of acquiescence which the District Court erred in inferring and ruling during the proposed Summary Judgment motions. The ultimate aggregation of records largely in the custody of the Wells Fargo defendant, lawfully accessible to HUD in their obligation to disclose and cooperate meaningfully. (USDC Doc 24 – Pg 8-9)

Wells Fargo employee, Tyler Smith makes assurances, inducements, promises which to this day, have not materialized, despite the work he and I, working in good faith, tried to achieve in resolution (emails available or can be discovered, parcel

with same price per square foot, etc). [3] Numerous writings have been sent to Wells Fargo's Office of the President as it is known over the time duration with mixed written responses (all essentially denial or ignorance related written responses) and ultimately no lawful action and resolution most troublingly, which necessitates this federal civil filing. (USDC Doc 24 – Pg 8-9)

With promises from HUD and Wells Fargo in hand, and the expectation of trust embedded in these institutions by the public, customers and citizens, what could one do but provide the certainty of time to make the determination that the appointed employees and public servants both have not act on the authorities granted (authorities made clear in signed "public agreements") or have any intention of making good on their stated promises and/or are indeed complicit in illegal actions, or public deceit. If the statements by Rosie Madrano Flores are true then ceteris paribus, other conditions remaining the same, Zaitsev engaged in fraud in the authoring of a certification form(s) and/or requirements documents or closing documents necessary to obtain property and one or more other employees or contractors were involved in the unlawful concealment and bid rigging necessary to make the Defendant Zaitsev's bid the winning bid and to remove and or hide or fail to disclose in unlawful manner, my bid, the high amount winning bid, which was not accepted or acknowledge and worse, actively prevented despite writings, communications, lawful process and engagement of all parties, regulators, known authorities, signatories to agreements, and other high level employees and staff who

[3] Further, that concealment of these facts by a large institution which in every other way of operating, demands our trust, effectively loses accountability and legitimacy.

may not have been part of the original unlawful actions but were in a position to correct the unlawful actions or present a timely resolution and remedy outside of a judicial process. Further is it clear by the service of process address and photographic evidence that Arseni Zaitsev did not relinquish his other residences or owner occupy required on the form which details civil and criminal liability and recourse from Wells Fargo and HUD under the proper enforcement of law and agreement.

STANDARD OF REVIEW

1. De novo review for 28 U.S.C. § 2254(d) an ineffective assistance of counsel claim.

2. Questions of law: statutory interpretation and contract interpretation and interpretation of Federal Rules. District Court erred in not granting standing and claim of Plaintiff denying discovery motions, and Summary Judgment and Default judgment motions. [4]

3. District Court misconstrued controlling precedent and thus committed legal error in denying Plaintiffs motion for summary judgment. "It is understood that, pursuant to Section 801(b)(4) of the Act, upon approval of this Agreement by the Assistant Secretary, this Agreement is a public document." So again, "Concealment of a right by one whose duty it is to disclose it prevents running of statute of

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[4] "The (Fair Housing) Act provides for enforcement actions by the Attorney General, as well as by private parties. See 42 U.S.C. 3613-3614. Private litigation under the Act by fair housing organizations, like plaintiff, provides an important supplement to government enforcement under the Act." See *Trafficante v. Metropolitan Life Ins. Co.*, 409 *U.S. Equal Rights Center v. Post Properties, Inc., et al*, No. 09-5359 (D.C. Cir. 2011) https://www.justice.gov/sites/default/files/crt/legacy/2011/03/21/post_appeal_amic us_7-13-10.pdf 42 U.S.C. 3601 and *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 903-904 (9th Cir.), cert. denied, 537 U.S. 1018 (2002); *Housing Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc.*, 943 F.2d 644, 646 (6th Cir. 1991) *CELOTEX CORP. v. CATRETT*, 477 U.S. 317 (1986)

limitations. *Hoyle v. Jones*, 35 Ga. 40, 89 Am. Dec. 273 (1886); *Southern Feed Stores v. Sanders*, 193 Ga. 884, 20 S.E.2d 413 (1942).

4. District Court applied an incorrect legal standard in granting defendants' motion to dismiss based on Shotgun Pleading. The district court held that plaintiff, as a matter of law, failed to establish injury for purposes of standing, this was erroneous.

5. Generally, an agency's interpretation of a statutory provision or regulation it is charged with administering is entitled to deference. See *Biodiversity Legal Found. v. Badgley,* 309 F.3d 1166, 1175 (9th Cir. 2002) The District Court did not show deference to the HUD agency rules by allowing the defendants motion for dismissal and not acknowledging or heading from or ordering a response from the HUD agency in its enforcement capacity or wherein the agency is experiencing regulatory capture from industry, order it to follow published rules and grant the default judgement.

6. Substantial evidence.

7. Agency Determinations: [5] en banc review if granted otherwise default to HUD conciliation agreement signatory Sara Pratt statements.

8. Reasonableness: [6]Which details the HUD Agency's own Reasonable Cause Guidance. Concealment per se amounts to actual fraud when for any reason one

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[5] United States v. Hialeah Housing Authority (11th Cir.)
https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/hialeah.pdf

[6] "Court should hold that Sections 3604(b) and (f)(2) of the FHA apply to post-acquisition discrimination." *Paulk v. Georgia Department of Transportation (11th Circuit)*
https://www.fairhousingnc.org/wp-content/uploads/2013/07/HUD-Reasonable-Cause-Guidance.pdf

party has the right to expect full communication of facts from another. *Morris v. Johnstone*, 172 Ga. 598, 158 S.E. 308 (1931); *Breedlove v. Aiken*, 85 Ga. App. 719, 70 S.E.2d 85 (1952); *Comerford v. Hurley*, 154 Ga. App. 387, 268 S.E.2d 358, aff'd, 246 Ga. 501, 271 S.E.2d 782 (1980). I remind the Court, Defendants and Public Agency Defendant of case law and precedent clearly disclosed here under Georgia and Federal Laws. Supreme Court of Texas: "[w]hen the defendant is under a duty to make a disclosure but fraudulently conceals the existence of the cause of action from the one to whom it belongs, the guilty party will be estopped from relying on the defense of limitations until the right of action is, or in the exercise of reasonable diligence should be, discovered." *Nichols v. Smith*, 507 S.W.2d 518, 519 (Tex. 1974). *Harris v. BMW of N. Am.*, LLC, CIVIL ACTION No. 4:19-CV-00016 (E.D. Tex. Dec. 3, 2020) (USCA11, Doc 15 – Pg. 35-36)

ARGUMENT

Fiduciary relation exists which renders it the duty of one possessing facts as to cause of action to reveal them; *Stephens v. Walker*, 193 Ga. 330, 18 S.E.2d 537 (1942).

Even upon inquiry before legally closing the transaction, Wells Fargo employees refused to acknowledge the legitimacy of the Plaintiff's offer, this evidence is available in the emails and lawfully recorded phone conversations in a one-party state (legal rule). With regards to the property servicers, "Wells Fargo urges and expects that you will comply with all applicable laws, regulations, and ordinances. We also urge your adherence to all industry best practices in the servicing of trust

properties, including in particular with respect to the maintenance, marketing and sale of properties held in the name of the trustee." (USDC Doc 24 – Pg 90) Why did this document contain this language? Wells Fargo was given special abilities to acquire Wachovia Bank during distress and "Wells Fargo Bank, N.A. ("Wells Fargo") is the trustee for various securitization trusts."

[7]Unquestionably Arseni Zaitsev, the agents, contractors, and intermediaries of both Zaitsev and particularly Wells Fargo knew of the necessity to check for the lawful status and details of the bidders (apparently, they had even been trained on this) and knew and concealed the facts of Zaitsev being an investor and conveyed information falsely to the Plaintiff that all bids were from first time home buyers. This fact is transcribed from communications and available in the complaint.

With regard to any notion of a "shotgun pleading" as it relates to language that seems to only exist in the 11th circuit: *Inform Inc. v. Google LLC,* No. 21-13289 (11th Cir. Aug. 26, 2022) The Court writing "Upon consideration, and with the benefit of oral argument, we reverse the district court's dismissal order and remand the case for further proceedings." This reference and those in the appendix demonstrate that the district court has not created a common or reliable definition that can be used with precision to dismiss. It's not a sound rule common to all circuits.

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[7] Fraud is defined by nontechnical standards and is not to be restricted by any common-law definition of false pretenses. One court has observed, "[t]he law does not define fraud; it needs no definition; it is as old as falsehood and as versatile as human ingenuity." *Weiss v. United States,* 122 F.2d 675, 681 (5th Cir. 1941), cert. denied, 314 U.S. 687 (1941). The Fourth Circuit, reviewing a conviction under 18 U.S.C. § 2314, also noted that "fraud is a broad term, which includes false representations, dishonesty and deceit." See *United States v. Grainger*, 701 F.2d 308, 311 (4th Cir. 1983), cert. denied, 461 U.S. 947 (1983).

Under Rule 8(d)(3), the plaintiff may assert as many alternative versions of the claim as he has evidence to support, may include both legal and equitable claims in the same complaint, and may assert different versions of a claim "regardless of consistency."

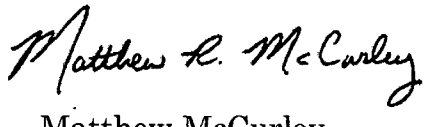
When a defendant has a duty to disclose, but fraudulently conceals the existence of a cause of action, it is estopped to rely on the affirmative defense of statute of limitations until the party learns of or should have learned of his right of action through the exercise of reasonable diligence. *Borderlon v. Peck*, 661 S.W.2d 907, 908 (Tex. 1983).

To this day, Wells Fargo management, C-suite, Board and executives have not furnished, despite requests, documents required under the "public agreement" even for a customer of the bank for over 20 years and shareholder. Clearly erroneous under FRCP52(a); 5 U.S.C. § 706(2).

CONCLUSION

Petitioner respectfully requests that the court grants this lawful petition.

Respectfully submitted,



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NOVEMBER 6, 2024