24-6750

ORIGINAL

No.____

IN THE

Supreme Court of the United States

TROY RAMBARANSINGH,

Petitioner

v.

BANK OF AMERICA NATIONAL ASSOCIATION, INDIVIDUALLY AND AS SUCCESSOR BY MERGER TO LASALLE BANK, NATIONAL ASSOCIATION, ON BEHALF OF THE HOLDERS OF THE ACCREDITED MORTGAGE LOAN TRUST 2005-3 ASET BACKED NOTES; US BANK NATIONAL ASSOCIATION; SELECT PORTFOLIO SERVICING INC; AND GREENSPOON MARDER, P.A.

Respondents

On Petition For Writ Of Certiorari
To The State of Florida's Fifth District Court of Appeal

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The United States Constitution vests the "judicial power" in Article III courts. Florida's Constitution has similar language, however, it proceeds to explain the jurisdiction of its various courts, including the Florida Supreme Court, which "[m]ay review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, *or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.*" Based on the highlighted language, the issuance of a PCA without written opinion effectively eliminates the jurisdiction of the Florida Supreme Court to hear the case, even if the outcome of the case would differ among the DCAs. This is troubling, to say the least, as it allows the District Courts to control the jurisdiction of the Supreme Court and allows unsettled issues to remain unsettled and/or allows rulings that are inconsistent with settled issues to become final judgments with no recourse.

The questions presented are:

1. Whether it is constitutional for district appellate courts in Florida to restrict or determine the Florida Supreme Court's jurisdiction through the issuance of a PCA, especially for unsettled or unclear legal issues and whether or not it undermines the separation of powers.

2. Whether the practice of issuing per curiam affirmances (PCAs) without written opinions violates the Due Process Clause of the Fourteenth Amendment as the lack of a written opinion in PCAs deprives litigants of their right to meaningful appellate review and judicial transparency.
3. Whether there is a constitutional distinction between cases of fraud upon the court involving officers of the court and those that do not, and whether Florida Rule of Civil Procedure 1.540(b)(3) distinguishes fraud upon the court from other fraud claims
4. Whether the doctrines of res judicata, collateral estoppel, and the statute of limitations apply to independent actions brought in cases of fraud upon the court involving officers of the court.
5. Whether attorneys who fabricate evidence, knowingly file fraudulent documents into the court record, suborn perjury, and/or withhold court-compelled discovery are protected under the litigation privilege or if these actions constitute fraud upon the court and whether that can be grounds for an independent action to vacate the judgment and recover damages.
6. Whether Florida courts' foreclosures on its resident citizens' homestead property conducted under Florida Statute 673 (Article 3, UCC) violate the Due Process Clause regarding the deprivation or seizing of US citizens' homes in Florida, when the enforcement of mortgages requires compliance with Florida Statute 679.2031(2)(a) (Article 9, UCC).

LIST OF PARTIES AND RELATED CASE

All parties appear in the caption of the case on the cover page.

The following list of proceedings are directly related to this case:

- *Bank of America National Association v. Danielle Hilaire & Troy Rambaransingh,* No. 2009-CA-007-907. Judgment entered May 18, 2015
- *Danielle Hilaire & Troy Rambaransingh v. Bank of America National Association, et al.* No. 5D15-2188. Fifth District Court of Appeals of the State of Florida. PCA Judgment entered March 29, 2016
- *Troy Rambaransingh & Danielle Hilaire v. U.S. Bank National Association, et al.* No. 2016-CA-002291 Fla. Dist. Ct 18th Judicial Circuit Seminole County. Judgment entered January 25, 2017
- *Troy Rambaransingh & Danielle Hilaire v. U.S. Bank National Association, et al.* No. 5D17-594 Fifth District Court of Appeals of the State of Florida PCA Judgment entered December 26, 2017
- *Troy Rambaransingh & Danielle Hilaire v. U.S. Bank National Association, et al.* No. 6:20-cv-679-Orl-78LRH U.S. District Court Middle District of Florida Case Dismissed for Lack of Jurisdiction entered on March 18, 2021
- *Danielle Hilaire & Troy Rambaransingh v. Bank of America National Association, et al.* No. 2021-CA-000310 Fla. Dist. Ct 18th Judicial Circuit Seminole County. Judgment entered September 28, 2022.

- *Hilaire v. U.S. Bank National Association, et al.*, No. 5D2023-1127. Fifth District Court of Appeals of the State of Florida. PCA Judgment entered August 6, 2024.

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TABLE OF AUTHORITIES

Cases:

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The PCA Decision of the District Court of Appeal for the Fifth District of Florida is unreported and was issued as a per curiam affirmance without a written opinion and appears as Appendix A.

The opinion of the Circuit Court of the Eighteenth Judicial Circuit In and For Seminole County, Florida for the instant case is unreported and appears as Appendix B.

The Denial for Rehearing of the District Court of Appeal for the Fifth District of Florida is unreported and motion for rehearing, rearing en banc and request for written opinion was DENIED and appears as Appendix C.

The opinion of the District Court of Appeal for the Fifth District of Florida for the foreclosure case from which this independent action arises is unreported and was issued as a per curiam affirmance without a written opinion and appears as Appendix D.

The opinion of the Circuit Court of the Eighteenth Judicial Circuit In and For Seminole County, Florida for the foreclosure case from which this independent action arises is unreported and appears as Appendix E.

JURISDICTION

The date on which the highest state court decided my case via PCA was on August 6, 2024. A copy of that decision appears at Appendix A.

A timely petition for rehearing, rehearing en banc, and written opinion was thereafter denied on September 19, 2024, and a copy of the order denying rehearing, rehearing en banc, and written opinion appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including March 4, 2025, on January 3, 2025.

Jurisdiction is invoked under 28 U.S.C. § 1257(a) and 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides: "No State shall... deprive any person of life, liberty, or property, without due process of law."

U.S. Const. amend. XIV, § 1

STATEMENT OF THE CASE

This case arises from the issuance of a per curiam affirmance (PCA) without a written opinion by the District Court of Appeal for the Fifth District of Florida. The underlying litigation involves an independent action alleging fraud upon the court by officers of the court in a prior foreclosure action. After motions to dismiss were filed and denied to all Respondents, and then after a denial of their joint motion for reconsideration and having delayed furnishing any meaningful discovery, Respondents shifted gears and moved for summary judgment, claiming that there were no genuine issues of material fact that were plainly in dispute and claiming that the fabrication and forgery of the allonge and the perjury by the witness only amounted to intrinsic fraud, subject to the one-year limitation for dismissal. Even though Petitioners had clearly stated that the foreclosing attorneys were involved in the fabrication, forgery and the filing of the fraudulent allonge, as well as other fraudulent documents, into the court record, and were implicit in suborning perjury from the non-party witness who had also been trained by one of the law firms involved in the foreclosure, Respondents subverted these claims by arguing that their acts fall under litigation privilege and then directed the court's attention to Petitioners' prior litigious actions regarding their pursuit to uncover the truth about the fraud that occurred in the foreclosure action. In redirecting the court's attention to these matters, they were successful in diverting the attention from the allegations of the involvement of officers of the court committing a fraud upon the

court. In so doing, the lower state court granted summary judgment to the Respondents on the grounds that there were no genuine issues of material fact that were plainly in dispute. The state court also ruled that the independent action was barred by res judicata/collateral estoppel and the statute of limitations. The Court further ruled that Petitioners waived their claims because they were compulsory counterclaims that they failed to raise in the foreclosure action. Petitioners appealed to Florida's 5th DCA, raising the fact that the above issues precluded the involvement of officers of the court engaging in the fraud upon the court and as such, Petitioners' independent action for fraud upon the court was not subject to res judicata/collateral estoppel or the statute of limitations and that Petitioners' claim of the officers of the court being involved in the fraud that they had alleged in the foreclosure case was not ripe because they were denied their requested discovery in the foreclosure case and had no substantial proof of the involvement of the officers' of the court until years later when the found the person that Respondents had filed the fraudulent allonge containing her signature, but that Court issued a PCA without written Opinion. Petitioners then filed motions for Rehearing, Rehearing En Banc, and Request for Written Opinion, but those motions were all denied, which brings us here.

Reasons for Granting the Petition

This petition should be granted because access to Florida's Supreme Court relies excessively on inflexible constitutional limitations, its criteria for supreme court review are substantially more restrictive than those employed in the majority of States because they are jurisdictional in nature, and its written opinion requirement is the most restrictive system in the United States. Accordingly, Florida's use of PCAs without written opinion has been problematic for thousands of its citizen residents in that they are unregulated, they are used in some cases that there is a debatable legal issue, and there are significant variations among the various district courts in their usage. As such, there appears to be a widespread abuse of discretion and ongoing violations of due process in the Florida Court system. Because PCAs are unpublished and have no precedential effect, this has led to conflict among the courts and matters of public interest, as well as matters which raise significant legal questions that are not being addressed and cleared up. Among those significant legal questions are those about Florida Rule of Civil Procedure 1.540(b) regarding independent actions for fraud upon the court, especially when it involves officers of the court. The Federal Court system has several case precedents for fraud upon the court by Officers of the Court, while Florida's court system doesn't seem to have any. This is especially important in Florida's court system because there presumably is a high percentage of fraudulent documents being fabricated and filed in its foreclosure cases by officers of the court,

along with abusive discovery in which the officers of the court do not comply with orders of the court to furnish important documents that should be in their client's ownership of the mortgage notes in question. In fact, Florida's officers of the court have somehow been able to divert the courts' attention from foreclosing according to Florida Statute 679.2031(2)(a) (UCC, Article 9), which deals with the enforcement of a security interest attached to collateral, like a mortgage, to Florida Statute 673 (UCC, Article 3), which deals with enforcement of a negotiable instrument that is not attached to collateral, like a promissory note or an unsecured loan. In the former statute, the foreclosing party must prove that value was given to acquire the mortgage note, ie. the money trail, in order to obtain the collateral, but in the latter, the only requirement, essentially, is to be in possession of the negotiable instrument.

1. **Florida's Overuse of PCAs in its Appellate Courts is an Abuse of Discretion and Violates Due Process for Thousands of Florida's Residents.**

   According to Ezequiel Lugo, in his article, *The Conflict of PCA: When an Affirmative Without Opinion Conflicts with a Written Opinion*, FLA. BAR J., (April 2011) "A PCA is by far the most common decision handed down by Florida's Appellate Courts" and continues to increase as the years go by. This is an abuse of discretion because it leaves litigants without a clear understanding behind the court's decision, especially when it concerns

> matters that are not clearly settled in statute or case law because a PCA cannot be the basis for conflict jurisdiction to the Florida Supreme Court and it impairs a party's ability to seek further review, which undermines confidence in the judiciary. By issuing a PCA without explanation in a case involving significant due process concerns, the appellate court deprived petitioners of meaningful appellate review. (*Goldberg v. Kelly*, 397 U.S. 254 (1970)). Due process requires courts to provide a reasoned explanation for judicial decisions to ensure transparency, accountability, and fairness (*Mullane v. Central Hanover Bank,* 339 U.S. 306, 314 (1950)). This is particularly true when the issues are unsettled or involve constitutional claims. Without written opinions, litigants cannot understand the basis for decisions, impairing their ability to seek further review and undermining confidence in the judiciary.

In the article, *Without Explanation: Judicial Restraint, Per Curiam Affirmances and the Written Opinion Rule,* written for FIU Law Review in 2017 by Craig E. Leen, City Attorney for Coral Gables at the time and who served as the Chair of the Ad Hoc Subcommittee on Per Curiam Affirmances for the Florida Appellate Court Rules Committee for a period of about one year, wrote it to compare Florida's reliance on PCAs to what occurs in other states and the federal government and he also conducts an analysis of PCAs under the doctrines of separation of powers, checks and balances and judicial

restraint, as well as other considerations both for and against PCAs. He eventually concluded with the recommendation that Florida move away from the use of PCAs, either eliminating them altogether or at least providing a brief explanation or citation of the basis of the decision. He pointed out that the Framers designed the federal government with three equal branches: the legislative, executive, and judicial. Both the legislative and executive branches are elected by the people, granting them the authority to enact policies that align with the public will, but the judicial branch is not meant to exercise will or make policy decisions but should focus solely on interpreting and applying the law. The foundation of judicial power, referenced in Article V, Section 1 of the Florida Constitution, originates from *Federalist No. 78*, where Alexander Hamilton, writing as Publius, elaborates on this principle:

> It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proves anything, would prove that there ought to be No judges distinct from that body.

Leen then argued that a PCA "is the quintessential outcome determinative decision, or, in other words, an exercise of will" and "can be compounded where the lower tribunal's decision does not contain any analysis either, such as where a motion for summary judgment is denied without

explanation and is later affirmed by a PCA." The same could be true of a summary judgment that is granted to the opposing party either without explanation or on an unsettled issue (as in Petitioners' case) and is later affirmed by PCA. This is to say that the state court system operating the way it currently is, could rule on an unsettled legal issue at both the trial and the appellate court levels without submitting any legal analysis at either level stating why or how the decision came about, leaving due process in the wind.

Leen then points out that the principle of judicial restraint is served where an explanation is provided with *every* opinion pointing to the established legal authority supporting the decision as it is based on *Federalist* Number 78. He explains that "[t]his is how the judiciary 'declares the sense of law' and exercises judgment instead of mere will." He further explains that:

> "[t]he benefit of reasoned analysis is that it demonstrates the legal basis for the decision, explaining to the parties and the public at large how the decision was based on recognized legal principles such as the doctrine of stare decisis, or on canons of construction, or even because the error raised was harmless under the law. Such explanations allow the losing party to accept the decision as an act of judgment instead of mere will, allowing the losing parties and non-parties to learn from the decision how to act in the future."

It also affords due process, as it provides the basis for a legal challenge if the decision was in error.

Former Florida Appellate Judge Gerald B. Cope, Jr. wrote the article, *Discretionary Review of the Decisions of Intermediate Appellate Courts: A*

Comparison of Florida's System with Those of the Other States and the Federal System, which compared the federal intermediate appellate court system with the state intermediate appellate court systems and highlighted Florida for its problematic restrictions on access to the Florida Supreme Court and essentially concluded that:

> 1) Florida's criteria, established by constitutional provisions, relies excessively on inflexible constitutional limitations;
> 2) Florida's criteria for supreme court review are substantially more restrictive than those employed in the majority of States and are unusually restrictive because they are jurisdictional in nature; and
> 3) Florida's written opinion requirement is the most restrictive system in the United States.

He then went on to recommend that: 1) the Florida Supreme Court be granted explicit authority to review any district court of appeal decision on the basis of the importance of the question presented and plenary authority to promulgate rules and guidelines for the exercise of its discretionary review powers; and 2) the requirement for a written opinion for discretionary review be eliminated. He points out about Florida's use of PCAs, that "...the practice is unregulated...affirmances without opinion are used in some cases in which there is a debatable issue,,,there are significant variations among the five district courts of appeal in their use of affirmances without opinion. He then points out, "From the standpoint of judicial administration, it is unsound to allow a district court of appeal decision to be reviewed by the United States Supreme Court, while depriving the Florida Supreme Court jurisdiction to review the same matter. That is, however, the effect of Florida's system of

categorical limitation, including the written opinion requirement." Of course, The United States Supreme Court "can, and does, review decisions from Florida and other states which have been rendered without opinion" There have been notable problems with Florida's use of PCAs where similar appealable issues were raised in a couple different cases, but Supreme Court access was available to the first case, but it was questionable whether the Supreme Court could review the second case, since there was no written opinion in the second one, even though the first case was reversed. (See *Moreland v. State / Spencer v. State* and *Murray v. State / Jollie v, State.)*

2. **Constitutional Distinction in Fraud Claims**: Courts have not explicitly defined the concept of "fraud on the court." (*United States v. Estate of Stonehill,* 660 F.3d 415, 444 (9th Cir. 2011)). However, where an attorney...obtains a judgment based on conduct that actively defrauds the court, such judgment may be attacked, and subsequently overturned, as fraud on the court. (*H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir. 1976)). Fraud upon the court involving officers of the court undermines the judicial process's integrity and is distinct from other forms of fraud because it undermines the judicial process itself. (*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944)) & (*Herring; et al v. United States*, 424 F.3d 384 (3rd Cir. 2005)). A conviction obtained through the knowing use of perjured testimony or suppression of material evidence

the prosecution violates due process under the Fourteenth Amendment. (Mooney v. Holohan, 294 U.S. 103 (1935))

One Court held that another form of fraud upon the court involves abusive discovery. It noted that:

> "[a] lawyer who seeks excessive discovery given what is at stake in the litigation, or who *makes boilerplate objections to discovery requests without particularizing their basis*, or who *is evasive or incomplete in responding to discovery*, or pursues discovery in order to make the cost for his or her adversary so great that the case settles to avoid the transaction costs, or *who delays the completion of discovery to prolong the litigation in order to achieve a tactical advantage*, or who engages in any of the myriad forms of discovery abuse that are so commonplace is . . . hindering the adjudication process, and . . . violating his or her duty of loyalty to the "procedures and institutions" the adversary system is intended to serve.) (*Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 362 (D. Md. 2008)).

This Honorable Court held in *Baxter v. Bressman,* 2017 U.S. App. LEXIS 20340 (3d Cir. Oct. 18, 2017), that "**Rule 60 has no applicability where, as here, a party requests relief from a final judgment in response to an opponent's alleged fraud on the court**" and in *Averbach v. Rival Mfg. Co.*, 809 F.2d 1016, 1020 (3d Cir. 1987). that "**the one year time limit in the rule, by virtue of the rule's very text, does not apply to independent actions" such as those for fraud on the court.** Also, this Honorable Court's decision in *Herring v. United States,* 424 F.3d 384, 389 (3d Cir. 2005) reaffirmed its holding in *Averbach*: "**An independent action alleging fraud upon the court is completely distinct from a motion under Rule 60(b).**" Florida Rule of Civil Procedure 1.540(b) was derived

from Federal Rules of Civil Procedure 60(b).

This Court has also held in *Hazel-Atlas Glass Co.*, 322 U.S. at 244 that **"under certain circumstances, one of which is after-discovered fraud," a court may exercise its equitable powers to vacate judgments "to fulfill a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence" to the finality of judgments; & at 248-49, that federal courts possess inherent power to vacate a judgment obtained by fraud on the court; (S*ee also Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 233-34 (1995).)**

Additionally, this Honorable Court held that "**a court may set aside a judgment based upon its finding of fraud on the court when an officer of the court has engaged in "egregious misconduct"** in *Herring v. United States*, 424 F.3d 384, 390 (3d Cir. 2005) (quoting *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 538 F.2d 180, 195 (8th Cir. 1976). **It was also noted in this case that there is an important distinction between perjury that is committed by a witness and fraudulent conduct that is directed at the court by one of its own officers.**

Finally, this Honorable Court held in *Marshall v. Holmes,* 141 U.S. 589 (1891) that an independent action to set aside a fraudulent judgment is not

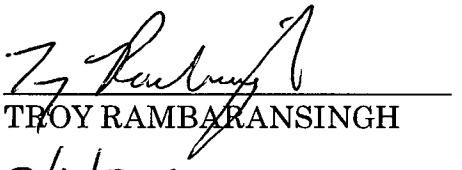
precluded by res judicata if the fraud prevented a fair trial.

3. **Fraud Upon the Court Undermines Judicial Integrity and Is Not Barred by Res Judicata or Statute of Limitations**: "The doctrine of res judicata does not apply where it can be demonstrated that the prior judgment was obtained by fraud, misrepresentation, or other misconduct."." (*DeClaire v. Yohanan*, 453 So. 2d 375 (Fla. 1984)) Courts have consistently held that fraud upon the court is not subject to res judicata or the statute of limitations because of its systemic impact (*Cox v. Burke*, 706 So. 2d 43, 47 (Fla. 5th DCA 1998)). There is no statute of limitations for a fraud on the court claim and a court may consider such a claim even if no adversarial parties are before the court. *Roussos*, 541 B.R. 721, 728-29 (Bankr. C.D. Cal. 2015)
4. **Officers of the Court Are Not Protected by Litigation Privilege When Committing Fraud**: The litigation privilege does not extend to fraudulent conduct that undermines judicial proceedings (*Amato v. Intindola*, 854 So. 2d 812 (Fla. 4th DCA 2003)). Allowing such protections erodes public trust in the courts and incentivizes misconduct.
5. **Misapplication of UCC Articles 3 and 9 Violates Due Process**: Florida courts routinely apply Florida Statute § 673 to foreclosures based on negotiable instruments. However, enforcement of a mortgage—a security interest—is governed by Florida Statute § 679.2031. The failure to enforce under the correct statute deprives litigants of property without due process.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



TROY RAMBARANSINGH

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