

IN THE
SUPREME COURT OF THE UNITED STATES

17-1782

HAMID MAHJOR

PETITIONER

vs.

GREENPOINT MORTGAGE FUNDING, INC., ET AL

RESPONDENT(S)

REQUEST FOR RECONSIDERATION

Please accept this as Petitioner, Hamid Mahjor's request for reconsideration of the decision of this Court denying certiorari.

FACTS / BACKGROUND

Petitioner was denied due process by the Courts (authorized by the U.S. Constitution, 5th and 14th Amendments, and VA Code §55-59, which states the terms of the contract control, and ¶22 of the Contract, the Deed of Trust, states the borrower can file a complaint and raise any defense) which dismissed his efforts to protect his Property from its taking by

another, thereby allowing enforcement of an illegal contract – which is a violation of public policy.

In 2006, Petitioner *thought* he was entering into a loan agreement with Greenpoint to secure the purchase of real property at 21 Pickett Lane in Stafford County, Virginia. Many months after closing the loan, Petitioner finally received a requested statement from the loan servicer which revealed the name of “Edwin Vasquez” as the borrower. Further inquiry led him nowhere, and he became suspicious and reported this to the FBI. The FBI investigated and the U.S. Attorney brought charges against several persons for fraud, many of whom were convicted, most important was the conviction of Mr. Milan, the mortgage broker. Petitioner was a key witness for the government in the case against Mr. Milan. Court proceedings reveal that the Vasquez Note, the one evidencing the loan to secure the Petitioner’s real property, was one of the fraudulent loans set up by the mortgage broker, Mr. Milan (see EDVA Dkt#8-1, page 3, ¶10 (4) Edwin V. for the purchase of a property at 21 Pickett Lane, Stafford Virginia (“the Property”).

In 2017, Greenpoint appointed a substitute trustee and scheduled a foreclosure sale of Petitioner’s real property for 3/9/17. Petitioner filed a pro se complaint in the Circuit Court of Stafford County, Virginia, seeking to

challenge the pending foreclosure. Petitioner then sought an injunction, this time with counsel, again in the Circuit Court of Stafford County, of said efforts and argued that the Vasquez Note was procured by fraud, thus was void, and thus the deed of trust securing its repayment was similarly void. The request for an injunction was denied. Petitioner, now with counsel, then amended his complaint. Defendants then removed the case to the Eastern District of Virginia and filed a 12(b)(6) motion to dismiss. The district court granted the motion to dismiss, holding that Mahjor had failed to raise the defense that the Vasquez Note was void within the two year statute of limitations and that the issue was res judicata given prior bankruptcy rulings.

Mahjor appealed that decision to the Fourth Circuit Court of Appeals, which affirmed the decision of the district court.

The amended complaint is straightforward: the subject promissory note was procured by fraud – fraud by Mr. Milan, an agent of Greenpoint who, with apparently the knowledge of Greenpoint, engaged in this fraud repeatedly to make money for his employer. The victim of that fraud is Petitioner, who had his entire down payment, \$184,000 (AC ¶14), stolen from him. Greenpoint is not the victim – as Greenpoint did not fund the loan, it was merely the [fraudulent] broker of the loan.

REASONS FOR RECONSIDERING

In requesting reconsideration Petitioner wishes to impress upon this Honorable Court three points: 1) void contracts cannot be enforced, 2) there is no statute of limitations on void contracts, and 3) void contracts cannot be brought back to life by their identification by a petitioner in bankruptcy or otherwise. Petitioner, pro se, provides the following supporting the above three points he wishes to impress upon this Court.

The Vasquez Note is Void Ab Initio

The true distinction between void and voidable acts, orders, and judgments is that the former can always be assailed in any proceeding, and the latter only in a direct proceeding. Alexander v. Nelson. 42 Ala. 462, 469 (1868). The distinction between the terms "void" and "voidable," in their application to contracts, is often one of great practical importance; and, whenever entire technical accuracy is required, the term "void" can only be properly applied to those contracts that are of no effect whatsoever, such as are a mere nullity, and incapable of confirmation or ratification. Allis v. Billings, 47 Mass. 415, 417 (1843).

Where there is some all-pervading vice, such as fraud or some unlawful act, as is present here, the general principle of *void in part, void in toto* should apply. Curtis v. Leavitt, 15 N. Y. 9, 96 (1857). A note executed by one (Milan) using the fictional / straw name of another (Vasquez), is an illegal contract, thus is a legal nullity and is void *ab initio*.

This Court stated "[t]he authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it. . . ." Kaiser Steel Corporation v. Mullins, 455 U.S. 72, 77 (1982) (*citing* McMullen v. Hoffman, 174 U.S. 639, 654, 19 S.Ct. 839, 845, (1899)). This Court further quoted McMullen stating that "to permit a recovery in this case is in substance to enforce an illegal contract, and one which is illegal because it is against public policy to permit it to stand. The court refuses to enforce such a contract and it permits defendant to set up its illegality, not out of any regard for the defendant who sets it up, but only on account of the public interest." *Id.*, 77 (again *citing* McMullen v. Hoffman, at 669, 19 S.Ct. 851, (1899)).

Here, the public interest calls for the same result. If the Note is void, and it is – arguing against that fact is an uphill battle in light of the evidence thereof (see EDVA Dkt#8-1), then the deed of trust is similarly void. The deed of trust serves one purpose – secure repayment of the debt, and is a mere incident thereto. Horvath v. Bank of N.Y., 641 F.3d 617, 623 (4th Cir., 2011); also see Carpenter v. Longan, 16 Wall. 271, 21 L.Ed.313, 83 U.S. 271 (1872)(The assignment must be of the Note and Deed of Trust, as assigning the latter without the former is a nullity); Williams v. Gifford, 139 Va. 779 (1924)(saying the same as Carpenter).

If there is no “debt” – and there is not as it is void – then there is, as a matter of law, no deed of trust. With no deed of trust, there can no foreclosure, no power of sale to exercise, and no trustee to a nonexistent deed of trust.

There can be little argument that a contract which is illegal – and using straw purchasers (i.e. fake names and information; it is unknown whether “Edwin Vasquez” is even a real person) is illegal – cannot be enforced. And “the law will not imply a promise to pay for services which are in derogation of public policy, any more than it will enforce a specific contract having that object in view; and when a plaintiff cannot establish his cause of action without relying on an illegal contract, or on services

which by their very nature contravene public policy, he cannot recover." Roller v. Murray, 112 Va. 780, 72 S.E. 665, 667 (Va., 1911). In the case *sub judice*, the above applies to Greenpoint and its agents: it cannot recover on the illegal contract. Nor can the substitute trustee enforce the power of sale in a deed of trust that secures a void note – there is no debt to secure, thus there is no deed of trust as a matter of law.

Statute Of Limitations

The District Court's basis for dismissing the claims was the argument that Mahjor failed to bring the claim that the note was void within two years of discovering the fraud relating thereto. Further, there was no specific ruling by any bankruptcy court that the note was or was not void as Petitioner did not file any adversarial proceeding in bankruptcy.

Once it is accepted – as it must be – that the note is void as illegal, then it may be challenged at *any* time by *anyone*, and may not be ratified by its listing on Petitioner's bankruptcy schedule. Speaking of void orders, the Supreme Court of Virginia has said, an order which is void *ab initio* can be challenged "by all persons, anywhere, at any time, or in any manner." Singh v. Mooney, 541 S.E. 2d 549, 551 (Va. 2001). The same applies to all things that are void – orders, contracts, or otherwise.

While the District Court, in its opinion, acknowledges the cited case law, it was not willing to accept that the same principle regarding void orders also applies to void notes. But the Virginia Supreme Court has been clear:

[A] void contract is a complete nullity, one that has no legal force or binding effect. It is one which never had any legal existence or effect, and one which cannot in any manner have life breathed into it ... In Cohen v. Mayflower Corp., 196 Va. 1153 1160, 86 S.E.2d 860, 864 (1955), we said: "It is, of course, elementary that 'A void contract is no contract at all; it binds no one and is a mere nullity. Accordingly, an action cannot be maintained for damages for its breach.'..." (Citations omitted).

Kennedy v. Annandale Boys Club, Inc., 272 S.E. 38, 39 (Va. 1980). Here, Greenpoint has maintained an action (foreclose is an action to collect a debt – Wilson v. Draper & Goldberg, P.L.L.C., 443 F.3d 373, 376 (4th Cir., 2006)) to enforce the default provisions of the note. An action cannot be maintained on the void note for nonpayment, nor can an action to enforce the deed of trust be maintained as it is a mere incident to the note (see Horvath, Carpenter, Williams, *supra*), and as the note is void, so is the deed of trust. If it is *void*, then no action may be maintained to enforce it ... ever. And it is irrelevant when Mahjor discovered the fraud – he only sought to defend against efforts of Greenpoint to foreclose on a void note secured by a similarly void deed of trust. Respectfully, there is no statute

of limitations for challenging the enforcement of a void promissory note or the deed of trust which secures it.

Bankruptcy

And given an illegal contract is “void ab initio” – it is “not voidable only, but wholly void, and of no legal effect, and [n]o performance on either side can give the unlawful contract any validity, or be the foundation of any right of action upon it.” Deal v. Commonwealth, 299 S.E. 2d 346, 348 (Va. 1983). Thus, the entirety of the Defendants’ arguments based on the bankruptcy filings of the Plaintiff are irrelevant – he has no more power to “make” the contract a “thing,” let alone a valid thing, than the Defendants. The mere fact a layperson with no legal training lists a debt on a bankruptcy schedule, in good faith, realizing the debt is not in his name but merely trying to resolve the lien on his real property, does not validate the void Vasquez Note. And similar to when a contract is once declared ultra vires, “the fact that it is executed does not validate it, nor can it be ratified so as to make it the basis of suit or action, nor does the doctrine of estoppel apply.” Id. At 348-349.

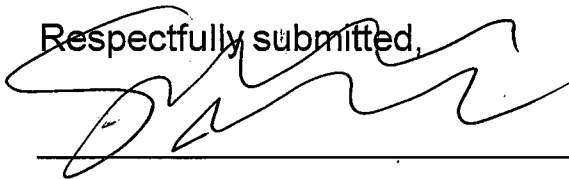
CONCLUSION

While the party secured by the fraudulent Vasquez Note has recourse against Milan and the wrongdoers (whether Greenpoint is one of

those wrongdoers is at issue), and *may* have some recourse against Petitioner, eg. unjust enrichment, it is clear a purported secured party cannot enforce the terms of the Note, or its associated Deed of Trust, as they are void and cannot be ratified. To allow the enforcement of the void note by Greenpoint, one of the alleged wrongdoers (per the Amended Complaint), was a violation of public policy and the District Court should have refused to allow its enforcement, not out of any regard for the defendant (here the Plaintiff/Petitioner, as in a nonjudicial state the borrower must file a complaint and raise defenses) who sets it up, but only on account of the public interest. The ruling of the District Court is in direct conflict with the opinions of this Court on the enforcement of Void contracts.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Hamid Mahjor', written over a horizontal line.

HAMID MAHJOR, Petitioner

Date 4/11/18