NO. ______________________________

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IN THE

SUPREME COURT OF THE UNITED STATES

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Margaret Bach - PETITIONER

vs.

JP MORGAN CHASE BANK - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

Wisconsin Supreme Court

PETITION FOR WRIT OF CERTIORARI

Margaret Bach

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QUESTIONS PRESENTED

1. Does a court have to follow established precedent with identical facts?
2. Did Chase breach their contract to Ms. Bach?
3. Was Bach Denied Due Process?
4. Should Chase's misconduct have been considered?
5. Did Chase violate the Fair Debt Collection Practices Act?
6. Is Bach due attorney fees?

LIST OF PARTIES

All parties involved in this Office of Lawyer Regulation case do not appear in the caption of the case on the cover page. The parties also include:

JP Morgan Chase Bank, NA
State of Wisconsin Department of Revenue
Sandra Butts

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TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Wisconsin Supreme Court appears at Appendix 3 to the petition.

JURISDICTION

The date on which the Wisconsin Supreme Court decided my case was September 11, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Margaret Bach had a first mortgage held by Fannie Mae and serviced by Chase, and a second mortgage held and serviced by Chase. Bach was repeatedly denied a loan modification until a Chase representative told her on 8-21-10 if she got behind in her mortgage, she would be eligible for a loan modification. So Bach did as directed and stopped making payments in November 2010. But instead of providing a loan modification, Chase filed foreclosure on 5-24-11 on her second mortgage and on 5-30-12 on her first mortgage.

Chase had sent a modification to Bach 11-10-11 and again 1-23-12 stating it was not too late to pay the trial period payment plan, ("TPP") and get a loan modification, which Bach then took advantage of making all required payments through March 2012. But Chase then told her it was cancelled because she had not made the payments before 1-23-12 and filed for bankruptcy. Bach replied the 1-23-12 letter changed the terms and she was in compliance for the contract/TPP, and that it was illegal to discriminate against someone for filing bankruptcy, but Chase filed foreclosure regardless.

Both foreclosures were filed in different courtrooms and litigated separately until the attorney on the second mortgage dismissed their claim to join the action with the attorney on the first mortgage, after considerable litigation.

The circuit court judge refused to allow Bach to enter her work product of Chase interactions as evidence and refused to hear any evidence on damages finding Bach prevailed on a promissory estoppel claim, but not the breach of contract claim, so she was due no damages. He also ruled there was no misconduct by Chase, although he previously ruled there was; no violation of the Fair Debt Collection Practices Act, ("FDCPA") even with repeated phone calls to Bach's cell phone she told Chase not to make, and threats her home would be sold despite a bankruptcy; and that the Chase second mortgage was not a party to this case, even though he refused Bach's earlier motion to not include them as a party, and had stated in previous hearings he could wipe out Bach's first and second mortgage.

REASONS FOR GRANTING REVIEW

I. Every Court Must Follow Established Precedent With Identical Facts, And This Case Showed Chase Breached Their Contract With Bach.

The legal system is essential to order in our society, and is built on constitutional law, statutes, and case law. The law must be applied equally to everyone. "The 14th Amendment provides that no state shall deprive any person of life, liberty, or property without due process of law, nor shall it deny to any person within its jurisdiction the equal protection of the laws." Ex Patre: Edward T. Young, 209 U.S. 123, 149, 28 S.Ct. 441, 450 (1908). "[J]ustice must satisfy the appearance of justice." Offut v. United States, 348 U.S. 11, 14, 75 S.CT. 11, 12, 99 L.Ed.11.

Bach's breach of contract and promissory estoppel claim was based on Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547, 557 (7th Cir. 2012), with near identical facts and the circuit court judge's prior statement it was relevant. The evidence supported Chase breached their loan modification contract with Bach with a unilateral cancelling of the contract because Bach filed for bankruptcy.

Wisconsin jury instructions provide, "For a contract to be binding, three things must occur: first, the offer; second, the acceptance; and third, the consideration." Wis JI- Civil 3010. A breach of contract is defined as, "A party to a contract breaches it when performance of a duty under the contract is due and the party fails to perform. Failing to perform a duty under the contract includes defectively performing as well as not performing at all." Wis JI-Civil 3053. "Even partial performance by the offeree of an offer of a unilateral contract does result in a binding contract." Marchiondo v. Scheck, 78 NM. 440, 432 P.2d 405, 407 (1967).

Bach's evidence showed Chase made an offer giving her a written contract for a loan modification 11-10-11, then extended the term for acceptance 1-23-12, which Bach confirmed by phone. With near identical facts in Wigod, the court found it was a valid offer because, " a reasonable person in Wigod's position would read the TPP [trial period plan] as a definite offer to provide a permanent modification that she could accept so long as she satisfied the conditions." (Id. at 562)

Bach's evidence showed she accepted that offer by her performance sending in the correct payments: \$1877.70 on 1-30-12, \$625.90 on 2-25-12, and \$625.90 on 3-30-12. She wrote her mortgage number 1978518968 on each check with the note "loan modification confirmed". Chase's original counsel confirmed they received and cashed these checks, and Bach supplied her bank statements showing this fact as well. Wigod made trial period payments under her loan modification contract as well. (Wigod at 558)

Bach's evidence showed there was consideration for this loan modification contract as well. She made the payments and Chase extended her a new loan allowing her to stay in her home. The similar contract in Wigod had adequate consideration because there was "detriment to the offeror, some benefit to the offeree, or some bargained-for exchange between them", which there was for Bach as well. (Id. at 562) There was acceptance/performance, as well as sufficiently definite and certain terms even though it did not specify the exact terms of the permanent loan modification, including the interest rate, the principal balance, loan duration, and the total monthly payment. (Id. at 564).

While Judge Noonan discussed this case as relevant in earlier hearings, at trial he said it did not apply because it was a federal case and it violated the statute of frauds. But the equal protection clause of the 14th Amendment stated Bach is due the same protections as Wigod with identical facts. Wigod prevailed on breach of contract, promissory estoppel, and FDCPA along with the attorney fees and all costs to be made whole, so that is what Bach is due. The law means nothing if it is not applied equally to everyone.

II. Bach Was Denied Due Process

Bach was denied due process in this case, so the court should reverse the ruling. "The Due Process Clauses protect civil litigants who seek recourse in the courts." Logan v. Zimmerman Brush Co., 455 U.S. 422, 429, 102 S.Ct. 1148 (1982). "The Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be 'equivalent of denying them an opportunity to be heard upon their claimed right[s]'". Id. at 429-30. Being denied a jury trial, relevant evidence, and damages on her promissory estoppel claim denied her due process.

A. Denied A Jury Trial

Bach was denied the jury trial she asked for. "The traditional and constitutional power of a court of equity is to try the facts before it and it is questionable whether one can voluntarily seek its aid and demand a jury trail. This reasoning is not applicable if the defendant is compelled by law to assert the counterclaim because he has no choice." Mortgage Associates, Inc., v. Monona Shores, Inc., 47 Wis.2d 171, 177, 177 N.W.2d 340 (1970). Bach was compelled to assert her counterclaims since they "arise out of the transaction or occurrence that is the subject matter of the action." (Id.) Defendant was "entitled to a jury trial as a matter of right because he would have been collaterally estopped from asserting certain of his claims of bad faith breach of the loan agreements against [plaintiff] in a separate action." Norwest Bank Wisconsin Eau Claire, N.A.. v. Plourde, 185 Wis.2d 377, 382, 518 N.W.2d 265 (Ct. App. 1994). See also Green Spring Farms v. Spring Green Farms Assocs., 172 Wis.2d 28, 33, 492 N.W.2d 392 (Ct. App. 1992).

Judge Noonan alluded to Bach's right to a jury trial, although he denied it, saying "And maybe the breach of contract technically theoretically could go to a jury and with damages potentially. Compensatory damages that are related to the breach. But once you start out with an equitable action, the breach of contract is a tag along and must be tried to the court." (R. 91, p. 38)

Denying Bach a jury trial denied her due process.

B. Denied Relevant Evidence

The circuit court refused to allow Bach to present relevant evidence in her defense, then ruled against her claims because she had not presented any evidence. This is an illegal Catch-22, this court should address.

One example was the evidence supporting Bach's contention she was told by a Chase representative to get behind in her mortgage to be eligible for a loan modification. Bach addressed it several times in the hearings, it was listed on her work product spread sheet, it was never denied by Chase, and Judge Noonan even repeated it in R. 91, p. 31:

> Well, she says that they made these representations about oh, well, don't make your

> payments because then you'll qualify for the HAMP or the loan modification programs. So they actually start telling her to do something to bring her into this stimulus money or whatever we're going to call the HAMP program to put her in default and then they can give her help pursuant to the modification program. So she relies upon that . . . that's kind of unclean hands to say to do that and then to punish her for defaulting and foreclosing on her.

But in the final hearing Judge Noonan said there was no evidence Bach stopped making her mortgage payments after being told to by Chase, refusing to let her enter her work product spreadsheet into evidence.

Another example was all the evidence Bach had supporting her damages. She tried to testify about it several times, but Judge Noonan refused to hear it, stating he would hear evidence on damages after he ruled on Bach's claims. Bach submitted evidence of her lost wages, deteriorating physical and mental health, harm to her credit, etc. But Judge Noonan would not allow this evidence in the record.

This a Catch-22 problem with the circuit court not admitting evidence on damages, then claiming there was no damages because there was no evidence. The appellate court cites to <u>Martindale v. Ripp</u>, 2001 WI 113, ¶ 28, 246 Wis.2d 67, 629 N.W.2d 698 to support not allowing Bach relevant evidence, but it supports she is due the evidence she submitted under the facts of this case. Because the circuit provided no rational basis for their decision to deny Bach all evidence she submitted, and then used the lack of evidence against her denying significant damages that would have been warranted with the evidence Bach presented. (Id. at ¶ 29-32)

There is no dispute that a defendant has a constitutional right to defend himself. Faretta v. California, 422 U.S. 806, 817, 95 S.Ct. 2525 (1975). The Sixth Amendment and Due Process Clause require relevant evidence be allowed. State v. Campbell, 294 Wis.2d 100, 117, 718 N.W.2d 649 (2006). All relevant evidence is admissible. Wis. Stat. § 904.02. "Adequate findings must be made in order to protect the rights of litigants and to facilitate review of the record by an appellate court." In the Matter of the Termination of Parental Rights to T.R.M., 100 Wis.2d 681, 687, 303 N.W.2d 581 (1981). The trial judge's exclusion of evidence was an error, and the case should therefore be remanded. State v. Hutnik, 39 Wis.2d 754, 763 159 N.W.2d 733, 737 (Wis. 1968). "In our state, admission of testimony is allowed if the testimony tends to prove a material fact." State v. Denny, 120 Wis.2d 614, 623, 357 N.W.2d 12, 16 (Ct. App. 1984). Courts have long emphasized the importance of allowing appellants access to the record so factual errors can be discovered, allowing for a "record of sufficient completeness". Coppedge v. United States, 369 U.S. 438, 446 (1962).

Bach was denied due process when she was denied admission of relevant evidence to support her claims.

C. Denied Promissory Estoppel Damages

The evidence supported Bach met the requirements of promissory estoppel when Chase told her to get 3-5 months behind on her mortgage in order to get a loan modification, she did as directed, but then they foreclosed instead of giving her the loan modification. Promissory estoppel must meet three conditions: 1.) Was the promise one which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee?; 2.) Did the promise induce such action or forbearance?; 3.) Can injustice be avoided only by enforcement of the promise? Hoffman v. Red Owl Stores, Inc., 26 Wis.2d 683, 698, 133 N.W.2d 267 (1965).

Bach met these three conditions. Most major banks realize they have a lot of power over homeowners. Our government has reinforced this idea by declaring them "too big to fail" and providing taxpayer money to bail them out. So when the bank holding your mortgage tells you to do something to get a loan modification you need, it is reasonable to expect the person to do as directed, inducing action of a definite and substantial character on the part of the promisee. Bach was told to get 3-5 months behind on her mortgage in order to qualify for a loan modification.

So Bach did as directed and stopped paying her mortgage. Chase entered the evidence showing her last timely payment was November 2010. (Exhibit 9; Exhibit 21, p. 8) Chase's promise did induce Bach to act.

But instead of providing the loan modification they promised, Chase filed foreclosure against Bach. Injustice can only be avoided by enforcement of the promise and damages to make Bach whole again for all the harm Chase's action caused.

Judge Noonan's rulings on this instance of promissory estoppel are not consistent, and an error of law, so should be overturned. At the last hearing Judge Noonan stated, "There is no evidence that supports that [Chase telling Bach to get behind] in this record." (R. 95, p. 31) He agreed with opposing counsel that Bach was in default before any promise was made to provide a loan modification. But all evidence was contrary. As discussed above, the date Bach was told by Chase to get behind in her mortgage to qualify for a loan modification was 8-21-10. This was not disputed, but Judge Noonan refused to enter the written evidence Bach had of this date and did not accept her testimony at the final hearing, even though he had n earlier hearings. And the date she stopped paying her mortgage was November of 2010, as proved by Chase's own evidence.

On the promissory estoppel claim Judge Noonan did grant Bach, he refused any damages as allowed. Judge Noonan cited Hoffman v. Red Owl Stores, Inc., and ruled no damages were due Bach other than photocopying fees. But the prevailing party in that case had a simple loss of money. He didn't spend over 500 hours fighting Goliath and suffer physical harm because of it. The facts are very different. The court had a duty to compensate Bach for her change in position, including the physical harm she suffered. "Damages may be determined by the plaintiff's expenditures or change in position in reliance as well as by the value to him of the promised performance." (Id. at 701-02) The circuit court never took this harm into account, and did not make Bach whole from the harm Chase caused with 2 foreclosures. This is denial of due process and an equal protection from the law every citizen is due in our country.

III. Chase's Misconduct Should Have Been Considered

Judge Noonan ruled there was no evidence Chase was malicious or intentionally disregarded Bach's rights, but this was proven wrong with much in the record.

A. Multi-State National Mortgage Settlement Agreement And The Foreclosure Crisis.

Bach introduced evidence on how Chase's misconduct violated federal law in the Multi-State National Mortgage Settlement Agreement and caused a foreclosure crisis. The recent movie, "The Big Short" emphasizes this national crisis and the culpability of big banks like Chase. Judge Noonan initially enthusiastically commented on this issue and saw it as integral to Bach's case:

1. "I have expressed off the record. And I wish again to acknowledge and take judicial notice of the foreclosure. I'm going to call it crisis in our country . . . Every Monday morning . . . they're well over 25, 30 foreclosures. And that's highly unusual compared to what it used to be the last time I was in large claims civil . . . a serious problem in our country." (R. 90, p. 24-25)

2. "The idea was because the banks got money from the federal government and apparently so did GM and AIG and a bunch of other corporate interests, but the individual homeowners didn't get much relief . . . as a matter of public policy, you [Bach] should be able to access that [federal funds to supply modification] and the banks, in my view at least, are to act in good faith because they've been given literally billions of dollars to see to it that the money didn't just flow through to their coffers to enrich themselves but to try to get homeowners to keep their homes." (Id. at 25-26)

3. "These are federal laws and programs that were put in place to do something about your case . . . there may or may not be noncompliance with a federal law here." (Id. at 29)

4. "Their conduct has to be judged in terms of the changes in federal law providing for these modification programs that didn't exist before." (Id. at 31)

5. "It seems to me to impose a duty upon your client to do things that they didn't used to do which is to actually do modifications . . . look you're a big bank. We give you lots of money. You have a duty to modify these things." (Id. at 34)

6. "Her type of claim is not unique in the country. There's quite a bit of complaining about these TPP's [Trail Period Plans] because I've heard them in family court . . . the court's calendar this morning, I must have had . . . 25 to 30 [foeclosures] with all the larger named creditors including . . . Chase. . . . She [Bach] isn't the only one to complain about difficulties in dealing with large lenders and so-called service people." (R. 91, p. 5-6)

7. "The promises they made or what they told you [Bach] What you relied upon. Like the fact that they said, well, don't make your payments. Well, you're relying on statements that they made. That they're estopped now from foreclosing. That's the essence of your case." (Id. at 40)

8. "Normally when you talk about judicial notice we're talking about facts that are known and are in the public domain that don't necessarily require a witness to do that . . . you know you've got some things in your briefs [newspaper articles on Chase misconduct] that indicate judicial notice. So why don't we leave it at that." (Id. at 28)

Contrary to all of the above, Judge Noonan would not allow Bach to enter the newspaper articles on Chase misconduct or judicial notice of the foreclosure crisis. Judge Noonan stated in the final hearing: " In Ms. Bach's words, it [trying to get a modification] was too lengthy, too long, too many mixed messages, too many conflicting notes, too many messages from too many different people. And she has – I fear perhaps too many consumers have gone through something similar given what I read in the newspapers, but I'm not supposed to acknowledge that too much." (Id. at 149) Judge Noonan does not say who told him he was not to acknowledge this bank misconduct too much, or why he believes this, but it is in direct contrast to volumes of past statements he made and clearly shows Chase was malicious or intentionally disregarded Bach's rights.

The Multi-State National Mortgage Settlement Agreement was violated. Chase took the government bailout with our taxes but then did not abide by the agreement:

a. Servicer shall continue to accept trial modification payments consistent with existing payment application practices. (A-5) Not cancel payments if the homeowner filed bankruptcy.

b. Servicer shall perform appropriate due diligence of Third-Party Providers' qualifications. (A-12) Not allow threats of setting a foreclosure sale date despite bankruptcy.

c. Servicer shall ensure that all information provided by or on behalf of Servicer to Third-Party Providers in connection with providing Servicing Activities is accurate and complete. (A-13) Not asking for forms to be faxed over and over without telling a homeowner what was wrong, or claiming an IRS form was improperly filled out when it wasn't, etc.

d. Servicer shall ensure that employees who are regularly engaged in servicing mortgage loans as to which the borrower or mortgager is in bankruptcy receive training specifically addressing bankruptcy issues. (A-15) Not allow abusive threats to those under bankruptcy protection.

e. Servicer shall offer and facilitate loan modifications for borrowers rather than initiate foreclosure. (A-17) Not do the opposite.

f. Servicer shall allow borrowers enrolled in a trial period plan . . . who made all required trial period payments, but were later denied, . . . the opportunity to reapply using current financial information. (A-17) Not use the borrowers financial information from years ago.

g. Servicer shall establish an easily accessible and reliable single point of contact. (A-22) Not 31 different people changes as Bach got.

h. Servicer shall not instruct, advise or recommend that borrowers go into default in order to qualify for loss mitigation relief. (A-31) Chase did the opposite.

i. Servicer may not deny any loss mitigation option to eligible borrowers on the basis that the borrower is a debtor in bankruptcy. (A-33) Chase did the opposite.

j. The agreement specifically lists deficiencies that warrant civil claims including deficiencies in performing loan modifications, (F-2) and collection activities like phone calls, (F-3).

Chase's misconduct in this case is even more egregious considering the Multi-State National Mortgage Settlement Agreement, which they had recently signed in February 2012. The circuit court could not reach an equitable decision without considering this important agreement and all the violations against Bach. Our tax dollars paid billions to Chase, but they refused to modify the $45,000 mortgage for Bach.

B. Unjust Enrichment.

The information on the Multi-State National Mortgage Settlement Agreement and the foreclosure crisis support Bach's claim of unjust enrichment she made.

Judge Noonan discussed Bach's claim of outrageous government conduct in detail at the 4-15-13 hearing stating he would take judicial notice of the fact that banks like Chase were given a bail-out with taxpayer dollars, but do not pass the benefit onto troubled homeowners, like Bach to negotiate in good faith to supply loan modifications. This meets the components for unjust enrichment in Puttkammer v. Minth, 83 Wis.2d 686, 689-90, 266 N.W.2d 361 (1978): 1.) a benefit was conferred on Chase with a tax-funded bailout; 2.) Chase as knowledge and appreciation of the bail-out; 3.) acceptance and retention of the bail-out under the circumstances make it inequitable to retain the benefit without paying for the value of the benefit.

C. Unclean Hands

Chase had unclean hands by telling Bach to stop paying her mortgage to enable her to get a loan modification, granting her a loan modification but cancelling it after receiving 5 payments because she filed for bankruptcy, and threatening her with harassing phone calls telling her they would sell her home and bankruptcy would not protect her, etc. All the while Chase makes risky investments that lose $9 million, but keep the taxpayer bailout because they are "too big to fail".

"One of the fundamental tenets of equity is that a person seeking equitable relief must come to the court with clean hands." Zinda v. Krause, 191 Wis.2d 154, 174, 528 N.W.2d 55 (Ct. App. 1995). Courts "will enforce [equitable rights] in the absence of facts and circumstances making such enforcement unjust of inequitable." Ward v. Prospect Manor Corp., 188 Wis. 534, 537, 206 N.W. 856 (1926).

Even the court ordered mediation Judge Noonan began was not made in good faith with Chase sending false and misleading notices. Chase said they needed more documents for the loan modification process in a letter while their attorney in the mediation had just stated they had all the information they needed, and the Chase representative on the phone tele-conferenced in agreed they had all the information they needed. Then the Chase representative told Bach over the phone her modification application was just sent to the underwriter, so a decision was a week or two away, yet Chase mails her a notice she was denied. When she called to reconcile the contradictory facts she was told it was still with the underwriter, yet the denial later stood. Finally, the denial stated it was because she made too much money, but later Chase said it was because she didn't make enough money.

This is unclean hands, and negligent misrepresentation supported by Ollerman v. O'Rourke Co., 94 Wis.2d 17, 25 (1980) and Corder v. Countrywide Home Loans, Inc., 2011 U.S. Dist. LEXIS 7667, 18-19 (S.D. W.

Va. Jan, 26, 2011), (Even when no obligation to modify exists, contracting parties are obliged to make truthful and accurate representations with the other party.)

D. Implied Covenant of Good Faith And Fair Dealing

All the facts herein support Chase was not operating in good faith, as they had a duty to do. "Wisconsin law recognizes that an implied covenant of good faith and fair dealing is implied in every contract." In re Estate of Chayka, 47 Wis.2d 102, 107 (1970). See also Roehl Transport, Inc., v. Liberty Mutual Ins. Co., 2010 WI 49, ¶ 43, 325 Wis.2d 56, 784 N.W.2d 542.. Nothing in the facts of this case support Chase made a good faith effort to supply a loan modification to Bach. This misconduct was not considered in reaching an equitable decision, so it should be overruled.

E. Courtroom Misconduct

Chase did everything it could to add time, expense, stress, and pain for Bach through the years of litigation. While Bach did graduate law school, she has never worked in the legal profession so to say this was a David and Goliath situation is not hyperbole. Chase had a battery of attorneys from more than one large law firm fight her every step of the way. Judge Noonan even commented he thought they were over-litigating the case, but they were never held accountable for their actions.

1. In the first foreclosure by Chase on her second mortgage counsel caused additional time, expense, stress, and pain for Bach by:

   a. Not showing up for two hearings

   b. Not investigating if a loan modification had been done when the judge asked them to.

   c. Refusing to consider any mediation or loan modification.

   d. Refusing to communicate with Bach when she called opposing counsel by phone.

   e. Refusing to respond to Bach's motion for consolidation, as the judge requested.

2. In the second foreclosure by Chase on her first mortgage there were many malicious actions that denied Bach her rights:

   a. After the first counsel for Chase with Gray & Associates did not win their motion for summary judgment, new counsel with Michael Best & Friedrich was appointed. The new counsel seemed uninformed of the case history filing another motion to dismiss, even after a prior motion to dismiss and motion for summary judgment had failed. So new briefs were written, and hearings were held going over the same facts and issues, as well as new issues.

   b. Attorney Jenness came to the pre-trial hearing 1-8-14 without anyone with the authority to make decisions, so even when Judge Noonan mediated a settlement agreement, a new hearing had to be scheduled causing more delay and expense.

   c. Attorney Jenness refused to accommodate Bach's request for a deposition date and time that would not put her new job at risk. (R. 94, p. 41)

   d. Attorney Jenness was not timely with discovery, and added significant additional time, stress, and expense for Bach by providing 3700 documents on a CD, which Bach told her she could not access, and none of the documents were labeled, in any order, and many were duplicates. Had she not accepted the documents on CD, Chase counsel informed her they would charge her hundreds of dollars.

e. Chase had three attorneys there for the trial 8-21-14. They easily spent more on attorney fees than Bâch's first mortgage was worth.

The court had a duty to consider this misconduct in making an equitable decision, but they did not. This is an error of law, and reason to overrule the decision.

F. Wis. Stat. § 224.77

All parties must abide by the law. The evidence supported Chase violated state law developed to protect consumers from deceptive practices by the mortgage industry: Wis. Stat. § 224.77. Specifically, Chase may not:

(b) Make, in any manner, any materially false or deceptive statement or representation, including engaging in bait and switch advertising or falsely representing residential mortgage loan rates, points, or other financing terms or conditions.

(c) Make a false, deceptive, or misleading promise relating to the services being offered or that influences, persuades, or induces a client to act to his or her detriment.

(d) Pursue a continued and flagrant course of misrepresentation, or make false promises, whether directly or through agents or advertising.

The facts support Chase violated all these statutory requirements, it led to harm for Bach, so both equitable and promissory estoppel should allow damages, including attorney fees.

G. Federal Bankruptcy Laws

Bach is due compensation for Chase's violation of Federal Bankruptcy Law protections.

It is illegal to retaliate against someone for filing bankruptcy. See 15 U.S.C. § 525(b). Judge Noonan agreed Chase had no right to cancel Bach's loan modification because she filed bankruptcy.

> I am concerned of what happened here as to why that purported modification didn't continue even though there's a bankruptcy. Chase is a very sophisticated institution. It receives notices of lots of bankruptcies. I'm not aware of any bankruptcy law or state law that would prohibit Chase from honoring a volunteer after the bankruptcy they did get notice of it. I'm not aware of any law that would say a bankruptcy filing voids.

R. 90, p. 33

Bach filed for Chapter 7 bankruptcy January 17, 2012 and listed all debts including any obligations to Sandra Butts, Milwaukee County, and all their employees from judgments. Bach's discharge was granted April 23, 2012. For corporation counsel for Milwaukee County to join this action on behalf of Sandra Butts is a violation of her protections under federal bankruptcy law.

Therefore, sanctions are warranted against Milwaukee County and Chase. "Limiting sanctions for discharge order violation to compensatory damages would "send a clear and damaging signal" to creditors that they could make calculated decisions to continue unlawful collection actions and pay only nominal damages when challenged." In re Mooney, 340 B.R. 351, 361 (Bankr. E.D. Tex. 2006). A "significant component of the fresh start [in bankruptcy] is being free of the kinds of harassment, threats, and anxiety that debtors were suffering before they filed." In re Gervin, 337 B.R. 854 (bankr. W.D. Tex. 2005). No expert medical evidence is needed to establish emotional harm. In re Atkins, 279 B.R. 639 (Bankr. N.D.N.Y. 2002). (awarding $30,000 in compensatory damages for emotional harm).

The circuit court did not consider Chase's violation of the federal law bankruptcy protections against Bach, as he should have, to do complete justice as a court of equity. Therefore, the decision should be overruled. The appellate court refusal to consider this valid law that undeniably applies to the facts of this case is error, and should be addressed by the Supreme Court.

IV. Chase Violated The FDCPA.

Congress enacted the Fair Debt Collection Practices Act ("FDCPA") to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

Bach's FDCPA claim is valid, supported by the facts of the case and the law's purpose. Chase violated the FDCPA under the following:

15 U.S.C. § 1692 (c) - (must cease communication when asked to.)
Bach presented the evidence that showed she asked Chase to stop calling her and the phone records that proved they still did.

15 U.S.C. § 1692 (d) - (not allowed to be abusive, threatening.)
Bach presented evidence she was threatened with a sale date on her home despite a recent bankruptcy filing.

15 U.S.C. § 1692 (e) - (cannot make false representations)
Promised Bach she can keep her home and get a loan modification if she gets 3-5 months behind on her payments, then denied a loan modification repeatedly for years.
Offered loan modifications but required the same documents be faxed in over and over, made statements that a form was not filled out properly so the IRS would not honor it when that was untrue.
Promised Bach she can keep her home and get a loan modification if she paid trial period payments, but then cancelling because she filed for bankruptcy.

15 U.S.C. § 1692 (f) - (cannot use unfair, unconscionable means to collect a debt).
All of the above, the history of this case supports Chase was unfair and unconscionable in their conduct. The final example was the late motions in limine Chase counsel tried to submit claiming Bach's settlement refusal of a new loan modification five days before trial meant she had not tried to mitigate damages.

Numerous other courts have confirmed the FDCPA can apply to mortgage foreclosure cases under 15 U.S.C. §§ 1692a(6), 1692a(6)(F)(iii). See Wilson v. Draper & Goldberg, 443 F.3d 373 (4th Cir. 2006); Kaltenbach v. Richards, 464 F.3d 524 (5th Cir. 2006); Piper v. Portnoff Law Assocs., 396 F.3d 227 (3rd Cir. 2005); In re Martinez, 311 F.3d 1272 (11th Cir. 2002); Shapirp v. Meinhold v. Zartman, 823 P.2d 120 (Colo. 1992).; and Bailey v. Security Nat'l Servicing Corp., 154 F.3d 384, 387 (7th Cir. 1998).

Judge Noonan dismissed the FDCPA stating it was not a violation because bank representatives made the calls to her home and cell phone. But this is an error of fact and law since Chase was the servicer of a Fannie Mae mortgage, so they do qualify for violations under the FDCPA. The FDCPA does not apply to lenders collecting their own debts, unless the lender adopts a different name when it does collection work, 15 U.S.C. § 1692a(6) or obtains the debt after default. Bailey v. Security Nat'l Servicing Corp., 154 F.3d 384, 387 (7th Cir. 1998). He also stated there was insufficient evidence to show the calls were unreasonable or of a harassing nature. This is also an error of fact and law since Bach testified to being threatened in the calls and how they made her cry, and the FDCPA has strict liability. One call, and you are guilty. Anderson v. Credit Bureau Collection Servs., Inc., 422 Fed. Appx. 534 (7th Cir. 2011).

Because of the egregious conduct of some very large corporations, the courts have recognized damages had to be significant to achieve the goal of deterring the abusive practices. Therefore, many courts have supported and compensated NIED claims in FDCPA complaints:

1. Mr. McCollough was awarded $250,000 for emotional distress and $60,000 in punitive damages. (McCollough v. Johnson, Rodenburg & Lauinger, LLC, No. 09-35767, (9th Cir. 2011).

2. The Boyce husband and wife were awarded $10,000 in actual damages for nausea and sleeplessness. (Boyce v. Attorney's Dispatch Serv., 1999 U.S. Dist. LEXIS 12970 (W.D. Ohio Apr. 27, 1999).

3. Mrs. Perez was awarded $5 million for her emotional distress caused by debt collectors trying to collect a debt she did not owe. (Greenpoint Credit Corp. v. Perez, 75 S.W.3d 40 (Tex. App. 2002).

4. Ms. Dowling was awarded $25,000 for mental anguish. Dowling v. Litton Loan Servicing, L.P., 2007 WL 7020413 (S.D. Ohio June 5, 2007).

5. Ms. Myers was awarded $92,000 in damages because she did not owe the debt, suffered abusive collection efforts, and suffered sleeplessness,

upset, and embarrassment. Myers v. LHR, Inc., 543 F.Supp.2d 1215,(S.D. Cal. 2008).

6. Mr. Bennett was awarded $100,000 for the collection efforts made against him for a debt he didn't owe and his hair loss/emotional distress. Bennett v. American Medical Response, Inc., 2007 U.S.App. LEXIS 7481 (9th Cir. 2007)
7. Ms. Nelson was awarded $85,000 in emotional distress damages for her FCRA and FDCPA claims, with only her testimony supplying the facts on her emotional distress. Nelson v. Equifax, No. CV 06-1568, 2006 WL 5453835 (C.D.Cal.2006)

Chase is guilty of violating the FDCPA, so Bach is due statutory, compensatory, and punitive damages. Other courts have already ruled Bach is due this remedy in Allen v. JP Morgan Chase Bank, case no. 13CV8285 in the District Court for the Northern District of IL providing a $10.2 million settlement on top of a prior $34 million settlement for making calls like Bach got to her cell phone after being asked not to.

V. Bach Is Due Attorney Fees

The egregious facts of this case support attorney fees should be paid to Bach. Attorney fees are awarded to *pro se* parties in many cases. In Freedom of Information Act Suits: Cuneo v. Rumsfeld, 553 F.2d 1360 (D.C.Cir.1977); Jones v. United States Secret Service, 81 F.R.D. 700 (D.D.C.1979); Marschner v. Department of State, 470 F.Supp. 196 (D.Conn.1979); Holly v. Acree, 72 F.R.D. 115 (D.D.C.1976), aff'd by order sub nom. Holly v. Chasen, 569 F.2d 160 (D.C.Cir.1977). In a similar foreclosure action suit the court awarded attorneys' fees because it furthered the "underlying policy of discouraging frivolous or harassing litigation." Ellis v.

Cassidy, 625 F.2d 227, 230-31 (9th Cir. 1980), Citing Christianburg Garment Co. v. EEOC, supra, 434 U.S. at 420, 98 S.Ct. at 699.

Chase has no incentive to not repeat their practice of discriminating against those who file for bankruptcy by cancelling their loan modifications as they did with Bach, without significant damages, which necessitates attorney fees. The average homeowner would not have the funds to support a protracted legal battle in two courtrooms like Bach managed. Bach could not afford counsel, so had no choice but to represent herself.

There can be no dispute from examining this record that Bach did legal work, and a lot of it. Judge Noonan remarked the case was over-litigated. The legal work Bach did on this case took time away from other legal work she could have done, so it is only equitable to award her for the value of her time. In similar circumstances other courts have agreed: "The appellees have actually suffered pecuniary loss, since they have been required to take time away from their practices to prepare and defend the suit." See Winer v. Jonal Corp., 169 Mont. 247, 545 P.2d 1095 (1976). "Legal services have actually been performed." See Wells v. Whinery, 34 Mich.App. 629, 192 N.W.2d 81 (Mich. 1971). "The difficulty of placing a dollar value on the legal services performed, present in the situation where a lay defendant represents himself, is largely absent in the case of an attorney who has established fees and billing practices." Ellis v. Cassidy at 231.

Bach turned down two clients in August 2014 because she was too busy working on this suit in her limited free time. She submitted evidence from three other clients who paid her $300 per hour for legal work. But the judge would not admit this evidence. This relevant evidence proved Bach suffered damages by spending over 500 hours defending foreclosures Chase was estopped from filing, under Judge Noonan's promissory estoppel ruling. Bach argues this exhibit was also relevant evidence supporting damages for her breach of contract claim as supported by Wigod, as well as damages for the many other claims cited herein. All relevant evidence must be admitted under Wis. Stat. § 904.02. "Any failure of the appellate process which prevents a putative appellant from demonstrating possible error constitutes a constitutional deprivation of the right to appeal." State v. Perry, 136 Wis.2d 92, 99, 401 N.W.2d 748 (1987).

Judge Noonan's Conclusions of Law in his Decision and Order from 10-28-14 include point 12 that stated:

> Ms. Bach provided no evidence of any costs and expenses with regard to her reliance on the promised loan modification nor any evidence of "out-of-pocket" expenditures based on any claimed change of position, and thus is not entitled to any reliance damages or other damages related to her promissory estoppel claim.

But this is untrue, for it was not that Bach provided no evidence, it was that Judge Noonan ruled the volumes of evidence irrelevant. In this case he said "Hold off on that [evidence on the value of Bach's time] because we're not sure there is an entitlement to that. It depends on what theory the court would adopt." (R. 94, p. 54) So again it is this circular Catch-22: he won't let the evidence in until the theory is decided, but then he rules there was no evidence. This is also contrary to what he promised Bach in the earlier hearing when he said, "I don't have a problem with you [Bach] testifying to almost anything you want to about what happened to you." (R. 92, p. 21)

The timeline Bach tried to submit documented over 500 hours she spent defending herself from Chase. This is relevant for damages along with the detail on what Bach was paid by clients for her legal work, so the court could calculate what Chase should pay to return Bach to her prior position. Had Chase not told Bach to get behind on her mortgage, then foreclose on her, she could have spent 526 hours making $300 an hour for a value of $157,800. That opportunity cost supports damages allowable, so the circuit court should have admitted the evidence.

"As our decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present his case and have it's merits fairly judged." Logan v. Zimmerman Brush Co., 455 U.S. 422, 433, 102 S.Ct. 1148, 1156, 71 L.Ed.2d 265 (1982). "[A] party aggrieved by a judgment or order of a district court may exercise the statutory right to appeal there from. Deposit Guaranty National Bank of Jackson, MS v. Roper, 445 U.S. 326, 333 (1980). Judicial access must be adequate, effective, and meaningful." Harrell v. Cook, 168 F.3d 428, 432 (7th Cir. 1999).

"Public policy guarantees citizens access to the courts." Schmit v.

Klumpyan, 2003 WI App. 107, ¶ 13, 264 Wis.2d 414, 663 N.W.2d 331, Citing Penterman v. Wis. Elec. Power Co., 211 Wis.2d 458, 474, 565 N.W.2d 521 (1997). "A citizens' right to judicial access must be "adequate, effective, and meaningful". Id. For a litigant to have meaningful access, he must be able to identify the central issues in the case and present evidence and arguments regarding those issues. Turner v. Rogers, 131 S.Ct. 2507 (2011).

Judge Noonan denied Bach the right to submit evidence on the value of her time, which is relevant since Chase took up so much of her time in needless litigation, and did everything it could to add time, expense, stress, and pain for Bach.

Wisconsin's constitution provides for a remedy for wrongs for citizens like Bach in article I, section 9:

> Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right". Marbury v. Madison, 5 U.S. 137, 163, 2 L. Ed. 60 (1803). Bach's only access to a remedy for the wrongs she suffered was to represent herself, which added considerable additional stress and financial hardship, therefore she is due compensation of reasonable attorney fees.

Public policy supports all attorneys, *pro se* and otherwise should be paid for the work they do. "Congress provided fee shifting to enhance enforcement of important civil rights, consumer-protection, and environmental policies. By providing competitive rates we assure that attorneys will take such cases, and hence increase the likelihood that the congressional policy of redressing public interest claims will be vindicated." Tolentino v. Friedman, 46 F.3d 645, 652-53 (7th Cir. 1995).

The 7th Circuit has been very clear: "the award of attorney fees to plaintiffs for a debt collector's violation of 'any provision' of the FDCPA is mandatory." Zagorski v. Midwest Billing Servs., Inc., 128 F.3d 1164, 1166 (7th Cir. 1997).

> In order to encourage able counsel to undertake FDCPA cases, as congress intended, it is necessary that counsel be awarded fees commensurate with those which they could obtain by taking other types of cases." Tolentino, 46 F.3d at 652; see also Gusman v. Unisys Corp., 986 F.2d 1146, 1150 (7th Cir.1993). "Paying counsel in FDCPA cases at rates lower than those they can obtain in the marketplace is inconsistent with the congressional desire to enforce the FDCPA through private actions, and therefore misapplies the law." Tolentino, 46 F.3d at 653.

Id. at 1167.

Chase violated several components of the FDCPA, so the attorney fees should be mandatory.

Finally, since bankruptcy rulings were at issue, and they allow for attorney fees as well. "[B]y the long established practice and universally recognized rule of the common law, in actions at law, the prevailing party is entitled to recover a judgment for costs . . . " Mansfield, C. & L. M. R. Co. v. Swan, 111 U. S. 379, 387 (1884). "The term has been found within the United States Statutes at Large since at least the Bankruptcy Act of 1867, which provided that '[t]he party prevailing in the suit shall be entitled to costs against the adverse party.' Act of Mar. 2, 1867, ch. 176, § 24, 14 Stat. 528. See also Act of Mar. 3, 1887, ch. 359, § 15, 24 Stat. 508." Buckhannon Board & Home Inc. v. West Virginia Dept. of Health & Human Resources, 532 U.S. 598, 611 (2001)

Based on all of the above, 28 U.S.C. § 1927 applies, which states:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

Badillo v. Central Steel & Wire Co., 717 F.2d 1160, 1166 (Ct. App. 7th Cir. 1983).

"[T]he power to assess costs on opposing counsel exists in response to "a serious and studied disregard for the orderly process of justice." Overnite Transportation, 697 F.2d at 795, citing Kiefel v. Las Vegas Hacienda, Inc., 404 F.2d 1163, 1167 (7th Cir.1968)

For all these reasons, equity demands attorney fees for Bach.

CONCLUSION

The law must apply equally to everyone, or it is meaningless. Established precedent must be followed when cases have identical facts as here. Every party is litigation must be given equal protection and due process. It was not here, so the court should grant review. Banks deemed "too big to fail" and given government bailouts must be held to their agreements. Chase has not in countless cases because courts have given them no incentive to change and abide by their settlement and the law. Bach asks this court to take this case and save her home for her and her disabled son. She is due compensatory, statutory, and punitive damages as well as attorney fees for the malicious and illegal conduct of Chase in their two unjust foreclosures against her.

Respectfully submitted,

____

Margaret Bach

Dated: December 10, 2017