

No. _____

In the
Supreme Court of the United States

KEITH A. SIMPSON,

Petitioner,

v.

THE BANK OF NEW YORK MELLON, etc.,

Respondent.

On Petition for Writ of Certiorari to
Florida's Third District Court Appeal

APPLICATION FOR A STAY OF WRIT OF POSSESSION

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CORPORATE DISCLOSURE STATEMENT

Bank of New York Mellon, Respondent/Plaintiff (NYSE: BK). There is no parent company of this entity.

Respectfully submitted,

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

Pursuant to Supreme Court Rule 23, Petitioner, Keith A. Simpson respectfully requests grant of a stay of the trial court's pending writ of possession which will be executed on June 20, 2018.

1. On June 20, 2018, a writ of possession will issue to evict Petitioner from his home which is handicapped accessible, and uniquely customized to accommodate his disabled wife. See Order granting writ and denying stay pending appeal to the U.S. Supreme Court attached as Appendix A.

2. The trial court vacated the foreclosure judgment due to fraud. The Florida Third District Court of Appeal reinstated the judgment, in contravention of controlling Florida Supreme Court precedent. The Supreme Court of Florida declined to accept jurisdiction, warranting this appeal.

3. The facts herein are that Bank of America, N.A. (BANA), the mortgage servicer for the Respondent, Bank of New York Mellon ("BONYM") engaged in fraud upon the court in this mortgage foreclosure, and many others.

4. BONYM, through BANA, presented a rubber stamped endorsement on a promissory note and a MERS assignment of mortgage as evidence of standing to foreclose in this case.

5. BANA fabricated that evidence after the fact in an effort to defraud the courts, federal regulators, and the U.S. Department of Justice leading up to and following the National Mortgage Settlement. BANA then suborned perjury from senior executives at the highest levels of BANA management to backdate the rubber stamped endorsement and cover up the fraud.

6. After years of stonewall discovery, BANA was caught ordering a third party vendor to destroy evidence under a court ordered subpoena in violation of federal law requiring records be retained for seven years. This was a military grade purge of 1.88 billion objects of data, metadata and encryption keys, meant to leave no trace behind.

7. Years later, that third party vendor turned over emails documenting this “extensive purge” and stating BANA ordered the destruction in a response to a subpoena in a False Claims Act case before the Honorable U. S. District Court Ursula Ungaro of the Southern District of Florida, Miami Division, in U.S. ex rel. Bruce Jacobs v. Bank of America Corp., et. al., U.S. Dist. Ct. Case No. 1:15-cv-24585-UU. See Source HOV emails attached as Appendix B.

8. Judge Ungaro allowed that False Claims Act case to proceed against BANA finding that “[u]sing rubber-stamped endorsements on promissory notes or relying on MERS transfers to foreclose on properties or obtain orders of sales falls within the scope of actions barred by the Consent Judgment Servicing

Standards....” See pg 19-20 of Omnibus Order attached as Appendix C. The trial judge below granted a motion to vacate the final judgment of foreclosure that alleged the same misconduct occurred in this case.

9. In 2014, in another foreclosure involving the same fraudulent evidence, the Honorable Miami-Dade Circuit Court Judge David Miller issued two orders documenting BANA’s “outrageous” and “bad faith” discovery abuses in covering up this unconscionable scheme to defraud the courts. See orders attached as Appendix D.

10. Once Judge Miller rotated to family court, BANA’s counsel threw a fundraiser for the successor judge who promptly vacated Judge Miller’s orders, struck all pleadings alleging misconduct, denied any further discovery, and entered a summary judgment of foreclosure.

11. The Third District Court of Appeal recently affirmed that result without comment in another similar case by issuing a per curiam affirmance, blocking further review by the Florida Supreme Court. A Motion for Rehearing and a Motion to Disqualify the Third District Court of Appeal is presently pending in that action. See attached as Appendix E and F.

12. The Motion to Disqualify the Third District Court of Appeal cited objective reasons to question the Court’s impartiality occurring over thirty-six

foreclosure appeals over nearly a decade, and several articles in the legal publication, the Daily Business Review, one of which stated:

There is no question that the Third District is pro-business and couldn't care less about homeowners.... [The Third DCA] abuses per curiam affirmances, or PCAs, to avoid explaining their rulings on lender standing,... [and] misuses the tool to strategically sidestep writing opinions that could provide grounds for rehearing. Instead, they say it uses the decisions to wipe out options for further review and avoid conflicts with other district courts.

13. After returning to the civil division in 2018, on May 27, 2018, Judge Miller conducted an extensive hearing in another BONYM foreclosure filed by BANA as servicer that relied on the same rubberstamped endorsement and MERS assignment as presented in this case and the false claims act case before Judge Ungaro.

14. Judge Miller concluded the hearing stating he had "heard enough" and issued an Order to Show Cause Why BONYM should not be held in Indirect Criminal Contempt of Court for committing fraud upon the court.

15. A criminal arraignment is set for on July 10, 2018. BONYM will plead guilty or not guilty to committing fraud upon the court for using the same evidence presented in this appeal. See hearing transcript attached as Appendix G.¹

¹ Judge Miller has yet to issue a formal written order to document his oral pronouncement that a criminal arraignment is set for July 10, 2018. Petitioner will file the written order once issued.

16. The demonstrable bias at the Third District Court of Appeal consistently favors bad corporate citizens and silently condones fraudulent conduct which denies due process. This negatively impacts the public's perception of the ability of the judiciary to render meaningful justice. As this Honorable Court has held:

the Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality ... safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process.... It preserves both the appearance and reality of fairness, ... by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.

Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980).

17. If the writ of possession is not stayed, Petitioner and his disabled wife will be forced from their home which is uniquely customized to accommodate her disability following a stroke. This Honorable Court should stay such a result pending a determination whether Petitioner received due process of law as guaranteed by the 5th and 14th Amendments to the United States Constitution.

18. Pursuant to Rule 23.3., Petitioner states that a stay is not available from any other court or judge because the Petitioner filed a motion for stay in the trial court which was denied (App. A), and no stay is available from the state appellate court because that court lost jurisdiction following affirmance of the judgment below.

19. On the other hand, Your Honor has the power and authority to grant a stay pending filing and review of Petitioner's forthcoming petition for certiorari. *See* 28 U.S.C. §2101(f).

20. A stay of the writ of possession should be granted as a matter of course because, with execution of the writ of possession being scheduled before the due date of Petitioner's petition for certiorari—and before this Court's ability to review the substance of that petition—the Petitioner otherwise will be denied his constitutional right to due process of law, as the anticipated eviction from his customized handicapped accessible home will be irreversible and essentially the “death penalty” for Petitioner in this equitable action of foreclosure. *See Williams v. Missouri*, 463 U.S. 1301, 1302 (1983)(holding that in death penalty case, “if a State schedules an execution to take place before filing and disposition of a petition for certiorari, I must stay that execution pending completion of direct review, as a matter of course”).

21. As this Honorable Court has held, “equitable powers of this court can *never* be exerted in behalf of one who has acted fraudulently, or who by deceit or any unfair means has gained an advantage.” *Bein v. Heath*, 47 U.S. 228, 246 (1848) (emphasis added).

For the foregoing reasons, Petitioner hereby requests that Your Honor issue an order staying the writ of execution issued by the lower court pending a resolution of this petition for writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND FILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to leichtling@ll-lawfirm.com to Adam B. Leichtling, Esq., Lapin & Leichtling, LLP., 255 Alhambra Circle, Suite 1250, Coral Gables, FL 33134 this 13th day of June 2018.