No. 18-1363



In The

**SUPREME COURT OF THE UNITED STATES**

David G, Morton,

Petitioner

vs.

BANK OF AMERICA HOME LOANS SERVICING LP, successor by acquisition to Countrywide Home Loans, Inc.; BARBARA J. DESOER, individually and as former President, BOA; BRIAN T. MOYNIHAN, individually and as CEO, BOA,

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

# PETITION FOR WRIT OF CERTIORARI

David G. Morton
*As Himself*
2261 Forest Hill Avenue, SE
Grand Rapids, Michigan 49546
(616) 485-6882

## QUESTIONS PRESENTED

I. Whether the appellate court erred in affirming the lower court's Summary Judgment made void by Respondents' documented violation of TILA, their default and tacit agreement not to protest enforcement, all of which denied Respondents standing.

II. Whether the appellate court erred in affirming the lower court's void Summary Judgment as it was based on the uninformed, frivolous opinions of its magistrate, absent any fact or law in support and was in conflict with this Court's unanimous decision in *Jenoski v. Countrywide Home Loans, Inc.*

III. Whether the appellate court erred in affirming the lower court's void Summary Judgment as it was garnered by Respondents' perpetration of fraud on the court and misprision by the presiding judge and magistrate.

IV. Whether appellate judges Gilman, Donald and Hood committed misprision of fraud by ignoring the barratry and acts of concealment/obfuscation, on the record by the lower court.

## PARTIES

All parties appear in the caption of the case on the cover page. It is presumed that they will retain the same attorney as was used in the lower court. For that reason, the list is repeated with the addition of counsel as follows:

BANK OF AMERICA HOME LOANS SERVICING, LP. n/k/a BANK OF AMERICA, N.A., successor by acquisition to COUNTRYWIDE HOME LOANS SERVICING, INC.; BARBARA J. DESOER, individually and as former President BOA; BRIAN T. MOYNIHAN, individually and as CEO

c/o Douglas E. Winter
Traci Choi,
BRYAN CAVE
1155 F Street, N.W.,
Washington, DC 20004.

TABLE OF CONTENTS



## INDEX TO APPENDICES

# TABLE OF AUTHORITIES

# IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF CERTIORARI OPINIONS BELOW

Petitioner respectfully requests that a Writ of Certiorari is granted.

---

## OPINIONS BELOW

A copy of the Memorandum Opinion and Order, dated December 10, 2013, and final Order, December 13, 2013, from the U.S. District Court, Western District of Michigan, adopting the magistrate's recommendation and dismissing Appellant's complaint, is reported at Dkt. #'s 59 & 67 in Case No. 1-12-cv-00511, and appear herein as Appendices A & B.

A copy of the Order from the United States court of appeals, dated July 28, 2014, denying Petitioner's appeal in Case No. 13-2083, appears herein as Appendix C .

Copies of Report and Recommendation, filed May 22, 2017, and the Opinion and Order from the U.S. District Court, Western District of Michigan, filed 9/22/2017, dismissing Petitioner's Complaint are reported as ECF Nos.19 & 24 in Case No. 1:16-cv-1270 and appear herein as Appendices D & E.

A copy of the Order from the United States Court of Appeals, filed March 19, 2018, denying Petitioner's appeal in Case No. 17-2330, appears herein as Appendix F.

Copies of the Order from the United States Court of Appeals, filed May 14, 2018, and Mandate filed May 22, 2018, denying Petitioner's Petition for Re-hearing En Banc, in Case No. 17-2330 appear collectively herein as Appendix G.

## JURISDICTION

The date on which the United States Court of Appeals decided Petitioner's case was March 19, 2018.

A timely petition for rehearing en banc was denied by the United States Court of Appeals on May 14, 2018. Copies of the letter from the Clerk of the court, dated May 14, 2018; the Order filed May 14, 2018; and the Mandate, dated May 22, 2018, appear collectively at Appendix G.

Pursuant to this Court's decision in *Jesinoski v. Countrywide Home Loans, Inc.,* Respondents were duly served a formal Notice to Cancel Loan (Notice of Rescission) filed with the Kent County Recorder on December 10, 2010. Respondents have failed to challenge or otherwise respond and are in default, which the lower courts refuse to acknowledge. Petitioner asks that this Court enforce the rights and remedies established by TILA to which he is entitled.

This Court must take jurisdiction as it remains the court of last resort.

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article VI, Section 2:

> "The Constitution and the Laws of the United States which shall be made in Pursuance thereof and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

United States Constitution, Articles V, IX and XIV in Amendment thereto:

> Article V:
>
> "No person shall be ..... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
>
> Article IX:
>
> "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the People."
>
> Article XIV, Section 1:
>
> "... 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

This petition for a Writ of Certiorari involves the failure of the appellate court to uphold and protect the rights of the unrepresented Petitioner and afford Petitioner a fair and impartial treatment of the issues raised in his appeal. Instead, the appellate court has: 1) ignored the lower court's denial of Petitioner's right to rescind despite Petitioner's timely exercising of same; 2) ignored the lower court's avoidance of Respondents' failure to overcome Petitioner's challenge to their standing; 3) ignored Respondents default and their stipulation to the commission of fraud and misrepresentation; and, 4) having demonstrated an ignorance of the content of Petitioner's Petition, blindly endorsed the lower court's overtly bias and void judgment against Petitioner.

In December 2010, as a result of Petitioner's research and discovery of the misrepresentation of the mortgage loan process instigated by Countrywide Home Loans, Inc. ("Countrywide")[1] against him and their refusal to respond to Petitioner's Qualified Written Request of November 3, 2009[2] Petitioner chose to exercise his right,[3] to rescind the note, which also terminated the mortgage [4] as an operation of

---

[1] succeeded through merger by Bank of America Home Loan Servicing, LP ("BOA")

[2] A copy of the Notary's Certificate of Non-Response/Non-Performance is annexed as Appendix H

[3] See: Restatement of the Law, Second Series - Contracts, Section 164 which deals with misrepresentation, meaning it is subject to rescission.

[4] According to TILA and the U.S. Supreme Court, "the loan is cancelled and the mortgage (with all rights of enforcement) terminated upon the mere mailing of the notice by the borrower". *Jesinoski v. Country Home Loans, Inc.* 135 S.Ct. 799 (2015)

law.[5] There were specific remedies afforded to Respondent, Bank of America Home Loan Servicing, LP ("BOA") [6] under TILA which they refused to exercise and thus were contractually bound to the penalties specifically enumerated in TILA, of which they have been in default for over seven years.

As a condition of their default, BOA **stipulated to their violation of statutory responsibilities and waived any defense.**

On June 12, 2012, two and a half years after the loan was cancelled, the mortgage terminated and MERS no longer an alleged "nominee" of Countrywide, BOA proffered an "Assignment of Mortgage" [7] identifying MERS as the assignor and BOA as the assignee. This was an impossibility as MERS had ceased to be a party in interest nearly 3 years prior, when BOA acquired Countrywide. The alleged "assignment" was an *ultra vires"* act. The merger *de jure* with BOA on July 1, 2011, notwithstanding, the filing of a Notice of Assignment was a fraudulent act. Title could not have possibly been lawfully conveyed to BOA.

This technicality did not prevent BOA from subsequently using the fraudulent "Assignment of Mortgage" document as the basis of their claim of rights to enforce the terms of the non-existent mortgage and to begin their foreclosure by advertisement process.

---

[5] A copy of Notice To Cancel Loan, filed into the public records and served on Respondents is annexed as Appendix I

[6] Which, unknown to Petitioner, had begun a two year acquisition in 2008, to bail out Countrywide through merger, to thwart the mounting lawsuits against Countrywide.

[7] A copy of the "Assignment of Mortgage" is annexed as Appendix J

Beginning February 10, 2010, Notices were sent to all parties, including their attorney at the time, foreclosure mill, Trott & Trott (now Trott Law) wherein directives and caveats were presented similar to the one contained in Petitioner's letter of November 21, 2011 to Hugh McColl, CEO/Chairman Bank of America:

> "Mr. McColl, should you dispute anything in this letter, set forth that which you dispute with specificity, supported by fact and constitutionally compliant law, attested to by oath or affirmation. This is to be received by me within twenty (20) days of service of this letter upon you.
>
> PLEASE TAKE NOTICE: YOUR FAILURE TO TIMELY COMPLY WITH THE DIRECTIVE ABOVE WILL CONSTITUTE YOUR STIPULATION TO AND AGREEMENT WITH EVERYTHING IN THIS LETTER, TO WHICH YOU AND BANK OF AMERICA AGREE TO BE CONTRACTUALLY BOUND, ENFORCEABLE IN ANY COURT , **WITHOUT YOUR PROTEST, BANK OF AMERICA'S OR OF THOSE WHO MAY REPRESENT YOU."** (emphasis added)

The law is clear. The ramifications of Respondents' non-response to Petitioner's 1numerous notices were clear. So was Respondents' refusal to comply. By their tacit stipulation and agreement, **Appellees have denied themselves any defense**.

Seeking redress in the 17th Circuit Court, Kent County, Petitioner filed a Quiet Title suit which Respondents immediately removed to the federal district court.

Over Petitioner's strong objection, despite BOA's failure to overcome Petitioner's challenge to jurisdiction, the district court usurped jurisdiction. Acting in want of lawful jurisdiction, the lower court ignored un-rebutted facts on the record which proved that for several reasons, Respondents claim that through

assignment from MERS, they had standing to foreclose, was absurd. The lower court conspicuously went out of their way to ignore this, the undisputed material facts, and other threshold issues in a bifurcated ruling against Petitioner (See: Appendices A & B)

In so doing the lower court Ignored the glaring acts of fraud, fraud on theourt and Respondents' obvious lack of standing. Judge Bell's magistrate, Joseph G. Scoville, even made a point of declaring the alleged documentary evidence upon which Respondents were relying fatally defective.[8] This did not apparently deter Bell from ruling against Petitioner, holding that Petitioner failed to "adequately plead a federal question". (See: Appendix B)

Petitioner appealed to the Sixth Circuit who, demonstrating a disturbing indifference to the sham proceedings of the lower court, merely "rubber stamped" almost verbatim, the District court's order and denied Petitioner's appeal. (See: Appendix C).

On October 26,2016, relying on the clear and unambiguous intent of the law regarding the liabilities of a defaulting party, and as a condition of their default, *i.e.*, Respondents agreeing not to "object or protest" Petitioner's right to a "*nehil dicit*" judgment, Petitioner applied to the lower court for enforcement thereof in case no. 1:16-cv-01270.

Unfortunately, his petition was met by the same obstinance which

---

[8] A copy of his Order is annexed as Appendix K

denied him the relief to which he was entitled in the previous suit, and who, hiding behind "res judicata" denied him a remedy for the second time. (See: Appendices D & E).

Meanwhile, this Court's unanimous decision in *Jesinoski v. Countrywide Home Loans,* was made available to the average layman several months after publication. Until this Court's ruling, courts in various venues [9] freely misinterpreted the provisions of the Act, setting limitations that were not contained therein. This had a chilling affect on its reliance, thereby severely restricting pleas based on the violations of the ACT.

However, with this Court's recent ruling, correcting the lower federal courts' propensity to misinterpret TILA regulations, a remedy was made available to those who had been victimized by the misguided actions of the lower courts.

TILA, (15 U.S.C. § 1601(a) - BRIEFLY

> The Act grants borrowers the right to rescind a loan "until midnight of the third business day following the *consummation* of the transaction or the delivery of the [disclosures required by the Act], whichever is *later*, by notifying the creditor, in accordance with regulations of the [Federal Reserve] Board, of his intention to do so." 15 U.S.C. § 1635(a) (2006 ed.). (emphasis added)

As the record attests, Respondents have neither proved the consummation of the loan, nor provided the disclosures required by the Act.

---

[9] The U.S. District Court for the Western District of Michigan, Southern Division among them

original or current Lender/Creditor remains hidden.

d) Provide a Notice of Right to Rescind/Cancel from the ***actual*** Lender/Creditor indicating the date the rescission period expires; See paragraph c)(i) above.

As the original note securing the "loan" continues to be securitized and resold, without notice to Petitioner of the act or the note's ultimate value, the "loan" cannot be considered consummated.

Failure to specifically perform as above, grants Petitioner an absolute right to rescind the alleged "loan" transaction, which Petitioner has exercised [11] and which both appellate and lower courts have refused to acknowledge.

VIOLATIONS OF TILA and GLBA

As of the date of Petitioner's Notice,[12] which evidences the exercising of his right to rescind under TILA, *rescission is effective* and the Security Instrument (*i.e.*, the Mortgage) is void *as a matter of law and by operation of law.* In *Jesinoski, supra*, at 792, this Court stated, in relevant part:

> Section 1635(a) explains in unequivocal terms how the right to rescind is to be exercised: It provides that a borrower "shall have the right to rescind ... *by notifying the creditor, in accordance with regulations of the Board, of his intention to do so*" (emphasis added). Section 1635(a) explains in unequivocal terms how the right to rescind is to be exercised: It provides that a borrower "shall have the right to rescind ... *by notifying the creditor, in accordance with regulations of the Board, of his intention to do so*" (emphasis added).

---

[11] See copy of verified Notice To Cancel Loan, annexed as Appendix I

[12] See Appendix I

> The language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind. It follows that, so long as the borrower notifies within three years after the transaction is consummated, his rescission is timely. The statute does not also require him to sue within three years. (emphasis added)

Certain mandatory disclosures required by the Gramm-Leach-Bliley Act ("GLBA") were not, and have not, yet been provided to the Petitioner by Countrywide nor its successor, n/k/a Bank of America, N.A. ("BANA"). Consequently Petitioner was not informed of the following:

- The collection and enforcement of the Promissory Note and Mortgage ceased with the indorsement and monetization of the Promissory Note, which effectively satisfied the obligation in full.
- Petitioner's Promissory Note was subsequently placed into a bankruptcy remote Special Purpose Vehicle (SPV) as a holding trust, [13] in which certificates were issued by the Underwriter, then marketed and sold to third-party investors;
- Petitioner's Promissory Note and Mortgage, were severed, effectively ending

---

[13] The trust's obligations are to pay on the UCC Article 8 securities. This only occurs after the mortgage payments have been slashed by all fees, costs, and advance reimbursements, by each of the indentured parties. "Profits" are also received through yield spreads, swap agreements, hedges, pledges, subordinations, monoline insurance, etc. There is also cross-collateralization. This means the mortgage payment is used as collateral for somebody else's mortgage. This creates a material breach of the note, as well as an impossibility of performance as to the borrower, as payments are not deemed received until the payment is received by the Lender or Note Holder (i.e. the party entitled to receive payment). It is also conversion for the benefit of another party, albeit "unknowingly." Yield spread premiums occur through interest-rate swap agreements where the interest rate (fixed or floating) is swapped with counter-party, usually overseas, as a hedge against future interest rates. The profits are not applied to the homeowner's account, but to the indentured parties, who receive it as a kickback. All of these, by the way, are violations of Section 8 of RESPA.

any/all claims and terminating the ownership interest/rights by Countrywide/BANA;

- Petitioner's responsibility to Countrywide, and any of its agents, assigns, subsidiaries, or custodians, was in fact terminated upon inception of the SPV;

Pursuant to GLBA, under 15 U.S.C. § 6802, at the time of establishing a customer relationship, a financial institution shall provide a *clear and conspicuous disclosure* to said consumer of such financial institution's policies and practices, including the categories of information that may be disclosed. The categories of information consist of "*a proposed or actual securitization,* [14] secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer."

OBLIGATION OF THE LENDER

The owner/holder of the Note and Mortgage with all rights to enforce the same (or an agent of the person so entitled) are liable for statutory and other damages pursuant to 15 U.S.C. § 1640(a), etc., if the security interest is not cancelled PUBLICLY and all consideration paid by Petitioner along with the original, unaltered Note returned within twenty (30) calendar days of receipt of the Notice of Rescission.

**OR**

---

[14] 15 U.S.C. § 6802(e)(1)(C)

Upon receipt of the Notice of Rescission, the burden is on the alleged "Lender"/ Creditor or assignee to contest the rescission. Failing to do so within twenty (20) days, the Mortgage is void and unenforceable by operation of law. If the "Lender"/Creditor does not comply with the statute within twenty (20) days, the alleged "Lender"/ Creditor **waives their defenses** and are in violation of their statutory responsibilities.

On October 26, 2017, with the above information under his belt, Petitioner filed a complaint with the U.S. District Court Western District of Michigan, case no. 1:16-cv-01270, against Respondents for violations of TILA.

Once again, he was confronted by the same obstinance and biased judiciary who denied him the remedy the law specifically provided. Both magistrate and judge engaged in mis-statements of Petitioner's arguments and what must be construed as deliberate avoidance of the facts in their combined narratives which were **devoid of any fact or law in support.** Respondents had been in default to their lawful obligation since December, 2010. Magistrate Carmody's reliance on *res judicata* and her posturing that the significance of *Jesinoski* has no import to Petitioner's failure to raise the TILA defense prior to the publication of said decision, should have been enough for the appellate court to vacate her order on this point alone. Judge Neff should have known, the *Jesinoski* decision clarified the time frame within which a claim could be filed for violation of TILA, eliminating the erroneous restrictive three year time limit, being enforced by her court and most federal courts.

Post *Jesinoski*, Petitioner was now able to raise Respondents' violations, *res judicata* not withstanding. See: *Allcock v, Allcock*, 437 N.E. 2d 392 (III. App. 3 Dist. 1982) With the basis of the final order of the lower court being the frivolous opinions of its judge and magistrate, the lower court's final order should have been declared VOID and VACATED by the appellate court.

The lower court magistrate and judge appeared to be unaware that the atmosphere surrounding the exercising of remedies for violations of TILA had changed with the holding of the U.S. Supreme Court in *Jesinoski*. Up to January 15, 2015, the federal district and circuit courts were ruling that unless an action to recover damages for violation of TILA were filed within 3 years, the action could not be maintained.

In the instant matter, the lower court magistrate and judge feigned ignorance that rescission was available for up to 3 years from when the loan was **consummated** not from when the documents were signed. Also, there is no time limit for filing an action. This could account for their uninformed and factually erroneous magistrate's Report and Recommendation and judge's Opinion and Order; [15] a) ignoring the tenets of TILA; and, b) their reliance on *res judicata*, which had no relevance.

It was incumbent on the appellate court to correct this misunderstanding not condone it. The appellate court knew or should have known that the time limit for filing a claim for violation of TILA does not begin to run until the "loan" is

---

[15] See: Appendices D & E

consummated, not necessarily when the documents were signed. As first year law students are taught, the date of consummation would be when the loan was funded and the liability of the borrower first arose as a result of the funding.

By unconditionally affirming the lower court's void order, the appellate court exposed either its incompetence or its indifference to the law. As the lower court record attests, Respondents have failed to place ANY evidentiary documentation, on the record, that the "loan" was funded. Accordingly, the time has yet to begin to run. The appellate court should have reversed or vacated the lower court judgment.

Instead, the appellate court, again, rubber stamped the lower court decision citing "*res judicata*", without even reading Petitioner's appeal. (See Appendix F). Had they done so, they could not have stated "that the issues raised in the petition were full considered upon the original submission and decision of the case". In addition, the remaining judges on the appellate panel refused to "vote on the suggestion for rehearing en banc", thereby denying Petitioner due process. (See: Appendix G)

---

## REASONS FOR GRANTING THE PETITION

The exceptional circumstances revealed herein warrant the exercise of this Court's discretionary powers. The appellate court, acting in concert with the lower court, denied Petitioner his right to enforcement of the Act. In the process the appellate court turned a blind eye to: 1) the undisputed facts: 2) Respondents' lack

of standing; 3) Respondents' default and stipulation to violation of TILA; 4) the extreme bias of the lower court; 5) Respondents' fraud on the court; 6) the lower court's mis-prison of fraud; and, 7) denial of due process.

As this Honorable Court is his last hope for justice, Petitioner asks that it carefully examine the actions of the lower federal courts in this matter, and honor its commitment to the people to protect and defend their rights "against the stealthy encroachment thereon",[16]

---

## CONCLUSION

Petitioner has fulfilled the requirements of the statute. Respondents have defaulted and are in dishonor. By law, Respondents' failure to perform and their stipulation and agreement not to protest, should deny them any right or cause to object or dispute this Petition in its entirety. Petitioner is entitled to the remedy set forth in TILA and this Court is asked to enforce it. Additionally, considering the egregious wrongs Petitioner has suffered as a direct and proximate result of the actions of Respondents these past seven years, Petitioner respectfully asks this Court to consider awarding Petitioner exemplary damages treble the face amount of the original Note.

Dated: August 4, 2018

Respectfully submitted,
/s/ David G. Morton, as himself
2261 Forest Hill Avenue, SE.
Grand Rapids, Michigan

---

[16] Boyd v. U.S., 116 U.S. 616