No.

IN THE

Supreme Court of the United States

TIMOTHY J. JOHNSTON,

v.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; MERSCORP HOLDINGS, INC.; THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2006-AR8, MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2006-AR8, FKA THE BANK OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RICHARD L. ANTOGNINI

Law Office of Richard L. Antognini
2036 Nevada City Hwy, Suite 636
Grass Valley, CA 95945
rlalawyer@yahoo.com
(916) 295-4896

DAVID G. BAKER
Counsel of Record

Law Office of David G. Baker
236 Huntington Ave Ste 317
Boston, MA 02115
bostonbankruptcy@gmail.com
(617) 340-3680

CURRY & TAYLOR ♦ 202-350-9073

QUESTION(S) PRESENTED

The *Rooker-Feldman* doctrine prevents "the lower federal courts from exercising jurisdiction over cases brought by 'state-court losers' challenging 'state court judgments rendered before the district court proceedings commenced." *Lance v. Dennis*, 546 U.S. 429, 460 (2006), *quoting Exxon-Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005) ("*Exxon-Mobil*"). The doctrine applies "where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court."

In *Lance v. Dennis*, 546 U.S. at 466 ("*Lance v. Dennis*"), this Court held that "the *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier court action simply because, for purposes of preclusion law, they would be considered in privity with a party to the judgment." The question presented is:

Does *Lance v. Dennis* allow a plaintiff to avoid the *Rooker-Feldman* and sue in federal court by claiming it was not a party to the state court litigation, even when it argues that the state court judgment binds it and it uses the judgment to give it standing in federal court?

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The opinion of the United States Court of Appeals for the Ninth Circuit is unpublished. That opinion is found in the Appendix to the Petition for a Writ of Certiorari (or "Pet. App."), at 1a to 5a. The opinion of the United States District Court for the Central District of California, (Pet. App. 6a to 19a), is unpublished. The order denying a petition for rehearing is found at Pet. App. 20a

JURISDICTION

The judgment of the court of appeals was entered on January 23, 2019. Pet. App. 1 a, 4 a. The court of appeals denied Petitioner's timely petition for rehearing on March 5, 2019. Pet. App. 20a. This Court has jurisdiction under 28 U.S.C. § 1254 (1).

RELEVANT PROVISIONS INVOLVED

28 U.S.C. § 1331 states:

> "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

STATEMENT

A. Johnston sues to quiet title.

Timothy J. Johnston ("Johnston") owned a home in Santa Maria, California. Pet. App. 7a. On July 27, 2006, he obtained a loan for $408,700 on the property.

Ibid. The lender was Southstar Funding, LLC ("Southstar"). *Ibid.*

In May 2012, Johnston sued under California law to quiet title to the home. Pet. App. 7a-8. He filed his action in the Superior Court of the State of California, County of Santa Barbara. *Ibid.* He named as defendants Southstar and "all persons or entities unknown, claiming any legal or equitable right, title, line or interest in the property described in this complaint…." Pet. App. 7a-8a. He served the complaint on Southstar, which did not respond. *Ibid.* He took Southstar's default and obtained a default judgment. *Ibid.* That judgment quieted title to the home to Johnson against Southstar and all "persons or entities unknown" that claimed title to the home Pet. App. 8a.

On June 26, 2015, MERS, Merscorp Holdings and BONYM filed a complaint in the United States District Court for the Central District of California. Pet. App. 8a. That complaint explained that when Johnston took out his loan in 2006, he signed a deed of trust. Pet. App. 7a. The deed of trust gave the lender the power to foreclose if the borrower defaulted on the loan. *Ibid.*

Under the deed of trust, that power could be exercised only by the "beneficiary." *Ibid.* The "beneficiary" included Southstar, the original lender, and its successors or assigns. *Ibid.* It also included MERS, which the deed of trust designated as the "beneficiary" and the "nominee" (i.e., the agent) of the original lender. *Ibid.* According to MERS, it had the power as the "beneficiary" and the "nominee" to assign the deed of trust or to prosecute a foreclosure. *Ibid.*

MERS recognized that it had to allege standing to sue in federal court. So, it argued that Johnston's

quiet title judgment injured it because the judgment deprived MERS of its interest in the property—its power to assign the deed of trust and its power to foreclose. Pet. App. 7a to 9a.

MERS alleged in its Second Amended Complaint: "As a result of the Quiet Title Judgment, MERS was damaged in that it lost the right to protect MERS bargained-for security interest in the property and to protect the interests of the successive owners of the [promissory] Note, who contracted with MERS to hold the security interest in the land records and to provide notice of actions that might threaten that interest." Second Amended Complaint filed Nov. 18, 2016, in action no. 2:15-cv-04853, at ¶ 60; Pet. App. At 7a-9a.

MERS also charged: "If the Quiet Title Judgment is upheld, the inevitable result is that the current investors on mortgage loans identifying MERS as beneficiary will cease using MERS for these purposes, causing Plaintiffs to lose significant transaction fees and revenues." Second Amended Complaint, at ¶ 63; Pet. App. At 7a-9a.

Based on these allegations, MERS contended that the quiet title judgment against Southstar injured its interests and gave it standing to sue in federal court. Pet. App. At 7a-9a. It argued that it was entitled to a quiet title judgment that restored its deed of trust and its lien on Johnston's home. Pet. App. At 7a-9a. It also argued that Johnston's quiet title judgment denied it due process because the judgment eliminated its lien on the home without notice. *Ibid.*

B. The District Court grants MERS summary judgment.

MERS filed an original complaint and a First Amended Complaint. Pet. App. 8a to 9a. Johnston then moved to dismiss. *Ibid.* The District Court gave MERS leave to amend, and MERS filed a Second Amended Complaint. *Ibid.* That complaint became the operative pleading. *Ibid.*

Johnston filed an answer and counterclaim. Pet. App. 9a. MERS then moved for summary judgment. In opposition, Johnson argued that the *Rooker-Feldman* doctrine barred the MERS complaint. Pet. App. 11a to 13a. He contended that MERS was making a collateral attack on the state court quiet title judgment. *Ibid.* MERS was asking the District Court to act as a court of appeal to review that judgment. *Ibid.*

The District Court rejected the *Rooker-Feldman* contention because MERS had not been a party to the state court judgment. Pet. App. 11a to 13a. It found it was bound by this Court's decision in *Lance v. Dennis*, 546 U.S. at 460.

The District Court then concluded that the state court judgment had violated California's quiet title statutes, which required Johnston to give MERS notice of the 2012 quiet title action because MERS had an interest in the property. Pet. App. At 15a to 17a. The court gave MERS summary judgment, restored its deed of trust, and restored MERS lien on the home. *Ibid.*

C. The Ninth Circuit affirms the District Court.

The Ninth Circuit affirmed the District Court. It held the District Court had subject matter jurisdiction "because MERS was not a party to the state court quiet title action." Pet. App. 2a. It, too, believed it was bound by *Lance v. Dennis*, 546 U.S. at 460. *Ibid.* The Ninth Circuit next ruled that MERS had standing in federal court because the quiet title judgment bound MERS and destroyed its interest in the Johnston property. "The quiet title judgment constitutes an injury in fact, which is directly traceable to Johnston's failure to name MERS and is remediable through an order declaring the quiet title judgment void." Pet. App. 2a.

The Ninth Circuit affirmed the District Court's rulings that the state court judgment had violated California's quiet title statutes, and those statutes required the restoration of the deed of trust and MERS' lien. Pet. App. 2a. It did not reach MERS' due process argument. *Ibid.*

Johnston filed a petition for rehearing and a suggestion for rehearing *en banc,* which the Ninth Circuit denied. Pet. App. 20a.

REASONS FOR GRANTING THE PETITION

I. Certiorari should be granted to hold that parties attacking a state court judgment cannot invoke subject matter jurisdiction when they rely on that judgment to give them standing.

This Court frequently cautions "'[f]ederal courts are courts of limited jurisdiction.'" *Home Depot, U.S.A., Inc. v Jackson*, -- S. Ct. __, 2019 WL 2257158, at * 2 (May 28, 2019), *quoting Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.A. 375, 377 (1994). The *Rooker-Feldman* doctrine expresses that policy. The doctrine means that federal courts may not act as "courts of appeal" over state court judgments. *Lance v. Dennis*, 546 U.S. at 463-464. A plaintiff may not use a federal court to launch a collateral attack on a state court judgment. *Ibid.*

In its classic formulation, the *Rooker-Feldman* doctrine bars "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005). Johnston argued before the lower courts that his case was a perfect application of *Rooker-Feldman.* A plaintiff was using a federal court action to undo a state court judgment— "district court review and rejection of" that judgment. Pet. App. 2a to 3a.

But, Johnston recognizes that his situation is not quite the classic *Rooker-Feldman* situation. In the usual case, the loser in state court turns to federal court to reverse a state court judgment. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. at 284. This scenario does not apply here, because Southstar was

the defendant in California state court. It is not asking a federal court to void the judgment Johnston obtained against it. A different entity, MERS, wants to erase that judgment.

Frequently, parties making a collateral attack on a state court judgment are in privity with the state court loser. They fear the state court judgment binds them and seek to undo it. *Lance v. Dennis*, 546 U.S. at 466-467. Privity is a main component of issue or claim preclusion. *Ibid.* This Court held in *Lance v. Dennis*, 546 U.S. at 466, that preclusion differs from the *Rooker-Feldman* doctrine. Just because a party may be in privity with the state court loser is not enough to eliminate federal subject matter jurisdiction: "The *Rooker-Feldman* doctrine does not bar actions by nonparties to the earlier state-court judgment simply because, for purposes of preclusion law, they would be considered in privity with a party to the judgment.´ *Lance v. Dennis*, 546 U.S. at 466.

Lance v. Dennis seems to be the end of Johnston's case. That conclusion was the holding of the District Court and the Ninth Circuit. Pet. App. 2a, 13a to 14a. Those courts thought that Johnston was arguing nothing more than that MERS was in privity with Southstar, the loser in state court. *Ibid.*

Johnston submits, however, that *Lance v. Dennis* should not be read so broadly. Federal courts have limited subject matter jurisdiction, *Home Depot, U.S.A., Inc. v Jackson*, -- S. Ct. __, 2019 WL 2257158, at * 2, and *Rooker-Feldman* supports that narrow jurisdiction. *Lance v. Dennis*, 546 U.S. at 466.

The lower courts also have qualms about a broad application of *Lance v. Dennis.* They refused to apply it when the plaintiff, even if in privity with a party to the state court action, alleged the state court judgment was

procured by fraud, a conspiracy, or corruption in the state court. *See, e.g., Great Western Mining & Mineral Co v. Fox Rothchild, LLP*, 615 F.3d 159, 172-173 (3rd Cir. 2010), *Coles v. Granville*, 448 F.3d 853, 859 (6th Cir.2006), *and Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 719 (4th Cir.2006).

Each case found that the *Rooker-Feldman* should be interpreted to bar a later federal court challenge to a state court judgment. Each turned on individual facts, but all refused to find federal court jurisdiction because the federal case was intertwined with the state court judgment. "When a federal plaintiff brings a claim, whether or not raised in state court, that asserts injury caused by a state-court judgment and seeks review and reversal of that judgment, the federal claim is 'inextricably intertwined' with the state judgment." *Great Western Mining & Mineral Co v. Fox Rothchild, LLP*, 615 F.3d at 170.

The MERS case against Johnston is "inextricably intertwined" with the state court quiet title judgment. MERS is not saying its claim is independent of the judgment. It contends that it is bound by the judgment because, if the judgment stands, it will be harmed. Pet. App. 7a to 9a.

This Court has not addressed whether the "inextricably intertwined" test is consistent with *Exxon-Mobil* or *Lance v. Dennis*. The holding of *Lance v. Dennis* seems categorical--*Rooker-Feldman* does not apply when a party is in privity with a party in the prior state court action. The "inextricably intertwined" test suggests an exception to that absolute rule. Review is needed to decide whether that test limits *Lance v. Dennis*.

Review also is necessary to decide if a party can invoke *Lance v. Dennis* when it uses the state court

judgment to argue the judgment gives it standing. A plaintiff cannot bring a federal court action unless it proves the defendant's conduct harmed it. It must allege and prove its standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 56-561 (1992).

MERS rests its standing solely on the allegation that Johnston's quiet title judgment erased its interest in the property:

> As a result of the Quiet Title Judgment, MERS was damaged in that it lost the right to protect MERS bargained-for security interest in the property and to protect the interests of the successive owners of the [promissory] Note, who contracted with MERS to hold the security interest in the land records and to provide notice of actions that might threaten that interest. [¶] If the Quiet Title Judgment is upheld, the inevitable result is that the current investors on mortgage loans identifying MERS as beneficiary will cease using MERS for these purposes, causing Plaintiffs to lose significant transaction fees and revenues. Second Amended Complaint filed Nov. 18, 2016, in action no. 2:15-cv-04853-BRO, at ¶¶ 60, 63; Pet. App. At 7a-9a.

MERS uses the binding effect of the state court judgment to establish its injury and its standing. Then it says the state court judgment does not bind it because it was not a party to the state court action. Pet. App. At 7a-9a. It must choose sides. If the state court judgment does not bind it, then the judgment causes it no harm, and it lacks standing. If the state court judgment binds it, then it must acknowledge that *Rooker-Feldman* bars it from suing in federal court.

Making a choice does not mean MERS lacks any remedy. California law allows it to file a motion in a California court to vacate the quiet title judgment or even a second action to attack the judgment. *Mortgage Electronic Registration Systems, Inc. v. Robinson*, 45 F.Supp..3d 1207; 1213 (C.D. Cal. 2014); section 473 (b) of the California Code of Civil Procedure. It can invoke state court remedies to deal with a state court problem, rather than flee to federal court.

The *Rooker-Feldman* problem is not unique to Timothy Johnston. Rather than rely on state court remedies, MERS frequently sues in federal court to undo state court judgments. *See, e.g., Mortgage Electronic Registration Systems, Inc. v. Robinson*, 45 F.Supp..3d at 1213-1214. And, as MERS points out, it is the beneficiary in thousands, if not millions, of mortgages in California and elsewhere. *Mortgage Electronic Registration Systems, Inc. v. Robinson, supra; Mortgage Electronic Registration Systems, Inc. v. Ditto*, 488 S.W. 265, 269-270 (Tenn. 2015).

MERS alleged in Johnston's case: "At this time, approximately 60% of residential mortgages nationwide identify MERS as mortgagee, beneficiary, or grantee (depending on the State). In California, MERS has millions of active loans for which it holds the security interest as the record beneficiary." Second Amended Complaint, at ¶ 23; Pet. App. At 7a-9a.

If MERS is named in millions of mortgages, it can expect hundreds if not thousands of cases in state court. It also can expect it will not be happy with many judgments of state courts, and it will turn to federal courts for relief. The *Rooker-Feldman* issues presented by Timothy Johnston's case will arise again.

CONCLUSION

For these reasons, petitioner TIMOTHY J. JOHNSTON respectfully requests that the Court grant his petition for a writ of certiorari.

RICHARD L. ANTOGNINI

Law Office of
Richard L. Antognini
2036 Nevada City Hwy,
Suite 636
Grass Valley, CA 95945
rlalawyer@yahoo.com
(916) 295-4896

DAVID G. BAKER
Counsel of Record

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