

No. 18-686

IN THE
Supreme Court of the United States

LAZINA KING; RIA KING, PETITIONERS

v.

CALIBER HOME LOANS INC.

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

PETITION FOR REHEARING

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Pursuant to Rule 44.1, Lazina and Ria King respectfully petitions for rehearing the Court's per curiam decision issued on February 19, 2019 to deny the Writ for Certiorari. We move this court to grant this petition for rehearing and consider our case with merits brief and oral argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of the Court's decision in this case. The grounds for rehearing are stated below.

REASONS FOR GRANTING REHEARING

1. The Courts are overlooking the **Consumer protection statute that regulates the Real Estate Settlement Procedures Act of 1974 (RESPA)** and its rule making authority which was transferred to the Consumer Financial Protection Board and promulgated the 2010 Dodd-Frank Wall-Street Reform and Consumer Protection Act, P , Pub. L. No. 111-203, 124 Stat. 1376. See 12 U.S.C. § 2617(a). **These rules are codified at 12 C.F.R. pt. 1024 and collectively known as "Regulation X."**¹ **In 2013, the CFPB amended Regulation X** to implement new rules governing mortgage servicing. 1 See generally 78 Fed. Reg. 10,696 (Feb. 14, 2013) (effective Jan. 10, 2014). These new rules came after the financial crisis, but responded to problems that had long preceded it:

As a result, the new rules it addressed a servicers' obligations to (1) "establish reasonable

¹ Regulations that the CFPB implements pursuant to section 6 of RESPA are privately enforceable. 12 U.S.C. § 2605(f).

policies and procedures to achieve certain delineated objectives"; (2) "provide information about mortgage loss mitigation options to delinquent borrowers"; (3) "establish policies and procedures for providing delinquent borrowers with continuity of contact with servicer personnel capable of performing certain functions"; and (4) "evaluate borrowers' applications for available loss mitigation options." 78 Fed. Reg. at 10,696.

This petition arose from a conflict most directly between the Fourth Circuit and the Supreme Court and the statutory text enacted by Congress which is relevant to these proceedings. The 114 Congress passed laws to provide greater protection for consumers during the housing crisis which affected the entire United States. As a Maryland Consumer/Citizen our rights were violated and upheld by the Court who were elected to protect the best interest of the citizen. On all levels of the Maryland Judicial System has our rights been violated, from unsigned court orders to failing to provide us with due process of the law, which is a clear violation of our fifth and seventh and eighth amendment rights by allowing Caliber Home Loans to brake federal and state laws and allowing an unjust and illegal foreclosures to continue despite the fact they were being notified on several occasions that their mortgage company were in direct violations of federal and state laws enacted to protect the great citizens such as us. With the completion of the illegal foreclosure we lost everything:

Under Section 6(f) of the RESPA Regulation the Dodd-Frank Act of Wall-Street is remedial in nature and provides a private right of action for an injured

party. An injured party from violations of the Act is entitled to recover statutory damages. The relevant statutory provisions are constantly being overlooked by the judicial system. From the circuit courts to the appeals courts and our constitutional rights have been egregiously violated.

2. The decision to affirm the Federal Court ruling on dismissing our case based on res judicata conflicts with the text, structure, and purpose of the Dodd and Frank Act of 2014.

Remedy for RESPA (Regulation X) violations came into existence in January 2014 with the new rules taking effect and promulgating the Real Estate Settlement Procedures Act of 1979, under the new found rules and Pursuant to 12. U.S.C. § 2605(f), a borrower may recover actual damages, attorney fees, costs and statutory penalty up to \$2,000 for pattern or practice. The majority of courts also held under these new rules that emotion distress damages were available as actual damages. See e.g. *Catalan v. GMAC mortgt., Corp.*, 629 (7th Cir. 2011); *McLean v. GMAC Mortgage Corp.*, 398 Fed Appx 467, 471 (11th Cir. 2010), *Houston v. U.S. Bank Home Mortg. Wis Servicing*, 505 Fed. Appx. 543, 548, n. 6 (6th Cir. 2012). The courts made it clear that under RESPA (Regulation X) violations that injunction relief was not available. See *Gray v. Cent. Mortg. CO.* 2010 U.S. Dist Lexis 47877 (N.D. Cal. April 14, 2010); the courts also made it clear that monetary compensation was the only thing available under the new rules and the violation had to occur during the foreclosure process and the home had to have been lost and all chances of redemption was lost before you could file a claim for damages i.e. actual damages attributed

to the alleged RESPA violations. See 12 U.S.C. § 2605(f)(1); citing (Minson v. Citimortgage, Inc., Civ No. 12-2233, 2013, at *5 (D. Md. May 29, 2013).)

3. Applying a restrictive view such as res judicata in this case would exceed the scope of Congress's intent as Congress has explained its general remedial purpose for Dodd-Frank, RESPA, and Regulation X as well as the FDCPA in its preamble to the final legislation as follows:

An Act to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "to big to fail", to protect the American tax payer by ending bail outs, to protect consumers from abusive financial services practices, and for other purposes. Dodd-Frank, 124 Stat 1376 (emphasis added). In addition, the remedial purpose of Dodd-Frank is also shown in the statutory text enacted by Congress relevant to these proceedings; A servicer of a federally related mortgage shall not...fail to take timely action to respond to a borrower's request to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties...or fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this chapter, 12 U.S.C.A. § 2506(k)(1)(C)(E) (emphasis added). Under the Chevron Act there were no bases in applying a restrictive view of the Dodd and Frank Act of 2014 and therefore, res judicata should not have applied. No law sanitizes defendants' conduct or

removes it from reach. Assuming arguendo that the issue of standing to foreclose were decided as defendants' posit, their concealment of evidence necessary to understand the magnitude of their scheme militate against preclusion Caliber never produced the cease and desist notice, Caliber never made a final decision on the loan modification request and Caliber withheld pertinent information from us that proved detrimental to our case and all of which were deemed unethical and ruled as against the law under the RESPA.

Applying a restrictive view such as res judicata in this case has exceeded the scope of Congress's intent as Congress has explained its general remedial purpose for Dodd-Frank, RESPA, and Regulation X as well as the FDCPA in its preamble to the final legislation as follows: An Act to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "to big to fail", to protect the American tax payer by ending bail outs, to protect consumers from abusive financial services practices, and for other purposes. Dodd-Frank, 124 Stat 1376 (emphasis added). In addition, the remedial purpose of Dodd-Frank is also shown in the statutory text enacted by Congress relevant to these proceedings; A servicer of a federally related mortgage shall not...fail to take timely action to respond to a borrower's request to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties...or fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this

chapter, 12 U.S.C.A. § 2506(k)(1)(C)(E) (emphasis added).

Under the Chevron Act there were no bases in applying a restrictive view of the Dodd and Frank Act of 2014 and therefore, res judicata should not have applied. Under the Chevron Test which the Supreme Court ruled that the U.S. Congress may delegate regulatory authority to an agency, and that agency regulations carry the weight of the law. The agency in question states that if any part of the act is violated, intentionally or unintentionally than the person who was harmed by the violation of the act can and should be able to recover damages for such error. Apply a restrictive review only allows for mortgage companies such as Caliber Home Loans Inc. to continue to violate state and federal laws because they know there are no recourse for violating the law as they are hiding behind immoral acts such as res judicata. Furthermore, the Fifth Amendment "Due Process Clause" the guarantee of due process for all persons requires the government to respect all rights, guarantees, and protection afforded by the U.S. Constitution and all applicable statutes before the government can deprive any person of life, liberty, or property.²

Experience has shown that applying a restrictive view of any statute enacted by Congress on further violates our constitutional rights and as a member of a corporation, a government never exercises its

² Due process essentially guarantees that a party will receive a fundamentally fair, orderly, and just judicial proceeding. The identical text in the fourteenth Amendment explicitly this due process requirement to the state as well.

sovereignty. It acts merely as a corporate, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act. Suits brought by or against it are not understood to be brought by or against the United States. The government, by becoming a corporate, lays down its sovereignty, so far as respects the transaction of the corporation, and exercises no power or privilege which is not derived from the charter.); *U.S. v. Georgia-Pacific Co.*, 421 F.2d 92, 101 (9th Cir. 1970). “) Emphasis supplied.

4. Rehearing is warranted to avoid the Plurality’s Anomalous “Janus-Faced” Interpretation.

We respectfully submit that the plurality’s misapprehension regarding the statutory requirement that the Courts have made it clear that a claim of fraud may preclude the court from applying *res judicata* or any claim preclusion doctrine. In federal cases such as *Barbato v. U.S. Bank Nat’l Ass’n*, No. 14-cv-2233, 2016 WL 158588 (S.D.N.Y. Jan 12, 2016) (quoting *Babb v. Capitalsource, Inc.*, 558 F. App’x 66, 68 (2d Cir. 2015)). In *Vossbrink v. Accredited Home Lenders, Inc* 773 F.3d 423 (2d Cir 2014) (*per curiam*), the plaintiff alleged that the defendant had violated federal and state law in issuing and servicing his loan *Id.* At 436. Such a claim falls outside the ambit of *res judicata* because the injuries “stem from the same transaction but are not directly cause by the foreclosure judgment.” *Gonzalez v. Deutshce Bank Trust Co.*, 632 F. App’x 32, 34 (2d Cir. 2016). This case meets the demanding threshold for rehearing especially because in *Vicks v. Ocwen Loan Servicing LLC*, (16-1909 4th Cir. 2017) Submitted January 20, 2017 and Decided January 25, 2017 in an

unreported opinion before the Honorable(s) Wilkinson, Duncan, and Thacker – the Fourth Circuit concluded that claim preclusion was not merit and remanded the RESPA claims back to the District Court for further proceedings.

Granting rehearing would provide an opportunity to “interpret the statute ‘as a ...coherent regulatory scheme’ and fit, if possible, all parts into a harmonious whole.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000). Ordinarily, of course courts strive to do just that. But here applying res judicata, the courts would conclude that the statute that Congress wrote and approved in 2014 would be null and voided because of the restrictive review applied to this case. Without the benefit of a written opinion, there are no ways to interpret or determine how and when to use the Dodd-Frank Act against a services once they have violated the provisions in such act. It is critical that the court grant certiorari and make a ruling on foreclosures as they are still being done in violations of federal and state laws.

CONCLUSION

For the foregoing reasons, and fir the reasons stated in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition for writ of certiorari, and review the judgement with the benefit of a written opinion.

Respectfully Submitted,

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CERTIFICATION

We hereby certify that this petition for rehearing is presented in good faith and not for delay as is restricted to the grounds specified in Rule 44.2

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