

No. \_\_\_\_\_

**In the  
Supreme Court of the United States**

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Gary C. Gosha and Kit M. Gosha  
together as husband and wife

Petitioners,

v.

BANK OF NEW YORK MELLON CORP.,  
a Delaware Corporation, fka Bank of New York  
as Trustee (CWALT 2005-72);  
BAYVIEW LOAN SERVICING LLC, a Florida Corporation;  
CLEAR RECON CORP, a California Corporation;  
BANK OF AMERICA, N.A., a Delaware Corporation,

Respondents.

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**Application to Justice Anthony M. Kennedy to Extend Time  
to File Petition for Writ of Certiorari to Review Judgment of the  
United States Court of Appeals for the Ninth Circuit**

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Petitioners, *pro se*

**To Supreme Court Justice Anthony M. Kennedy, Circuit Justice for the United States Court of Appeals for the Ninth Circuit:** Petitioners request a sixty-day (60) extension of time to file a petition for writ of certiorari to review the judgment from the Ninth Circuit. The current deadline to file the petition is Wednesday, July 18, 2018. This date is ninety days from April 19, 2018, when the Ninth Circuit denied our petition for rehearing and rehearing *en banc*. The new deadline would be September 16, 2018. This application is being filed more than 10 days prior to the Cert's current due date of July 18, 2018.

### **JURISDICTION**

The jurisdiction of this Court rests with 28 U.S.C. § 1254(1). Attached, is the Ninth Circuit's April 19, 2018 Order denying our timely Petition for Rehearing and Rehearing en banc, and its December 21, 2017 Judgment Memorandum affirming the trial court's adverse judgment.

### **BACKGROUND**

The Ninth Circuit's adverse judgment in this civil action raises two important Article III questions. **First**, *whether a party can; (1) obtain the benefit of a favorable trial court judgment; (2) take voluntary action that moots the dispute under Article III's case-or-controversy requirement; then (3) retain the benefit of that prior judgment?* **Second**, *whether a court of appeals can assert jurisdiction to adjudicate a trial court's dismissal of claims, with prejudice, before it specifically identifies and determines if each contested claim meets the case-or-controversy requirement of Article III when motioned by a party to do so?*

BONY (*collectively respondents Bank of New York Mellon, Bayview, and Clear Recon*) is the foreclosing party. Respondent Bank of America (BANA) is not a foreclosing party. BANA is a party to the case for ancillary reasons.

We (petitioners) filed our lawsuit on January 15, 2016 to contest BONY's pending non-judicial foreclosure of our home. On December 13, 2016, the Portland Oregon U.S. District Court dismissed the case with prejudice, and without leave to amend, on respondent's motion to dismiss under FRCP 12(b)(6) for failure to state a claim. We moved for reconsideration and timely appealed the trial court's adverse judgment on March 20, 2017. On appeal, having received the benefit of a favorable trial court ruling, BONY abruptly rescinded (mooted) its foreclosure. The rescission's timing was an unusual event because it occurred after our notice of appeal had been filed and before any briefing had commenced.

The Article III case-or-controversy implications related to the foreclosure's rescission are profound; (1) the mooted foreclosure no longer lives which means BONY must file a new one if it chooses to press the matter; (2) the justiciable controversies underwriting our prior claims for relief from it no longer live, (3) all parties are returned to the status quo before the foreclosure and the lawsuit began, and (4) the district court's adverse judgment against us, remains intact. Thus, BONY's rescission now forces us to face its new foreclosure unfairly prejudiced by res judicata and stare decisis attached to "*moot claims*" which were dismissed with prejudice and are related to a "*moot foreclosure*" to which the parties now have no cognizable legal interest in its outcome.

Fortunately, there are substantial precedents in the Ninth Circuit, and in the State of Oregon, that address this unusual set of legal conditions. These precedents prescribe that once a foreclosing party rescinds (moots) its foreclosure, any claim for relief raised against it, must be dismissed without prejudice under Article III's case-or-controversy requirements. These equitable precedents clear the path for future litigation between the parties and protect the rights of all litigants so that none are prejudiced. Unfortunately, Ninth Circuit panel declined to consider this case law when asked to do so in four pleadings. Our first request was raised in a "*motion to determine if our appeal was moot*" before any briefings had been filed (CA9 #12). In response, the panel simply denied the motion without identifying any of the moot claims or providing any factual or legal reasoning as to why it declined to do so. We raised the Article III issues again in our *Opening and Reply Briefs* (CA9 #18, #32), and once more in our *Petition for Rehearing and Rehearing en banc* (CA9 #42). In each additional instance, the Ninth Circuit panel declined to determine if any of our claims had been rendered moot by BONY's cancelled foreclosure and, therefore, its final judgment did not end the litigation between the parties. Having voluntarily withdrawn its first foreclosure without consequence from the Ninth Circuit, BONY has just advised us that it is now proceeding with a second.

### **REASONS FOR GRANTING THE EXTENSION OF TIME**

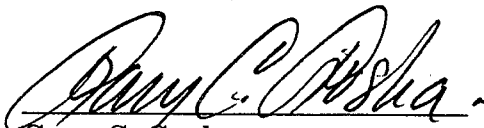
A 60-day extension of time is prudent given recent events. On June 19, 2018, just days ago, we were officially notified by the Oregon Foreclosure Avoidance Program (OFAP) that BONY requested mediation. OFAP is a program sponsored

by the Oregon Department of Justice. Parties wishing to foreclose in Oregon must participate in OFAP and receive a certificate of compliance prior to filing any foreclosure action. BONY's mediation request has created many tasks that must be completed by July 9, 2018, just two weeks from now. If these tasks are not completed on time, the mediation will be cancelled. Also, once mediation commences, it may be possible to reach a settlement with BONY which would negate the need to file the Cert. We have been advised that the requested resolution conference will take place between August 3<sup>rd</sup> and the 28<sup>th</sup>, which is within the 60-day time extension requested.

We also have an unresolved motion in the Oregon district court to withdraw and disburse (refund) \$5,300 in preliminary injunction security funds related to the now moot foreclosure. BONY objects to the motion and we are uncertain if the district court will resolve the matter before the time to file this Application expires on July 8, 2018.

Thus, we respectfully submit this Application for a sixty-day (60) extension of time to file our writ of certiorari.

Date: June 26, 2018



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