19-7655

No. 19 - ___

In The

Supreme Court of the United States

Joseph L. Worrell, *Petitioner*,

vs.

Emigrant Mortgage Company Inc., Et al, *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI

To the Eleventh Circuit Court of Appeals

Joseph L. Worrell, pro se.
Post Office Box 30071
West Palm Beach, FL 33420
Telephone: (561) 315-1750
Email: joworr@yahoo.com

QUESTIONS PRESENTED FOR REVIEW

1. Whether the "prepetition status quo ante" requirement of the bankruptcy dismissal statute, 11 U.S.C. § 349(b)(3), extinguishes unapproved postpetition sale(s) to unwind the case and revest the estate in the debtor. Thereby precluding such sales from confirmation without the bankruptcy court's exclusive approval, even four years post-dismissal.

2.

a. Does the modern-day Servicemembers Civil Relief Act (SCRA-2003), 50 U.S.C. §§ 3901 et. seq., mandate a statutory or judicial stay, if requested under the circumstances present in this case.

b. Does immediate dismissal of a properly filed Chapter 13 petition without § 1307(c) prerequisite notice, after the debtor is recalled to Active Duty, lift the automatic stay, even if no stay for military service exists.

3. Lastly, is an enforceable mortgage lien created merely by signing mortgage documents *six days* before executing the underlying promissory note. And if so, how long can such federally regulated uniform residential instruments of security survive, apart from a sufficiently executed predicate note.

RULE 29.6 DISCLOSURE STATEMENT

The names of the parties to this case are as they appear in the case caption: The Petitioner(s), Joseph Llewellyn Worrell, and Military Dependents. The Respondents, Emigrant Mortgage Company, Inc., and Retained Realty Inc., its wholly owned subsidiary.

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Statutes:

TABLE OF AUTHORITIES--Continued

Cases:

INTRODUCTION

This dispute comes for certiorari review on highly unusual footing likely presenting a case of first impression. It began over a decade ago in Chapter 13 bankruptcy proceedings prompted by ***summary*** judicial foreclosure, supposedly pursuant to Florida law (title VI, § 45.031). The dubious basis for foreclosure however, is a *"pre-dated"* ostensibly *federally regulated* uniform mortgage (or lien) created *six days* **before** a promissory note was sufficiently executed. This intriguing fact, which was actively repeatedly concealed from the debtor in bankruptcy proceedings, is not merely some minor clerical mistake to be overlooked. Besides, there is no reformation plea, and there is solid legal authority that a mortgage can have no existence outside the debt (or note) it purports to secure. Although it is elusively affirmatively plead at ¶¶ 10 & 28 of the foreclosure complaint[1].

That peculiar fact also raises serious questions about legal *standing* to foreclose, where there is no *perfected* security, and the defective[2] mortgage issue also is fully conceded. See *Carpenter v. Logan*, 83 U.S. 271 (1872) stating ". . . It [the mortgage] cannot survive for a moment the debt which the note represents.". Thus, by definition a valid mortgage cannot pre-exist the underlying predicate debt instrument, that is the primary controlling thing which the mortgage is itself premised on. In other words, a mortgage is like a dog's tail -- not a dog; it has no life

[1] The foreclosure complaint also contains a "Lost Note" Count affirmatively asserting (falsely) that alleged mortgagee is the owner and holder of a lost, destroyed, or stolen note (¶¶ 13, & 29), but then failed to "re-establish" the lost note under Fla. Sta. § 673.309. *Id.* Foreclosure complaint, Count-3, ¶¶ 35, & 36.

[2] A *defective mortgage lien* is where there is some serious and material discrepancy in the address, *date of execution*, executing parties, or dollar amount in a *federal uniform residential security instrument* which may render it invalid.

apart from the dog -- the essential thing to which it is attached. All that to say the underlying foreclosure claim is prima facie impossible and legally untenable. Basically, akin to asserting that someone's birthdate is before their grandparents'.

Additionally, there are other troubling irregularities here that are never properly addressed by the lower courts. Seemingly, due to considerable efforts to avoid ordinary provisions of the SCRA, and Bankruptcy Code. Some of the defects appear sufficiently serious to challenge the constitutionality, or validity, of the official actions. For instance, the *ex-parte* immediate dismissal of the properly filed Chapter 13 petition -- without any statutory prerequisite § 1307(c) "notice and hearing". Even though it was known and fully documented, that the Servicemember-debtor was involuntarily deployed. See *In re: Krueger* 88 B.R. 238, 241-42 (B.A.P. 9th Cir. 1988); holding dismissing a CH 13 petition without Notice violates due process, and is *void*.

Further, it is well-established -- at least since October 17, 1940 and even under the old statute[3] -- that persons performing military service are subject to certain legal protections prohibiting terminating ***Redemptive Rights*** to real property, during their military service; § 3936(b). Nevertheless, in this case, the key Florida statute at issue, § 45.0315, expressly calls for **no period of redemption** after a foreclosure sale, *unless the final judgment provides one.* Whereas, that specific requirement of state law is diametrically opposed to federal law in this instance. Therefore, the Constitution's supremacy clause dictates that § 45.0315 Florida law **must** yield; except here it doesn't.

[3] The Soldiers' and Sailors' Civil Relief Act of Oct. 17, 1940 (SSCRA-1940); Pub. L. 108-189.

The Court should grant this petition for certiorari so that the silence of the Eleventh Circuit on the significant questions posed by this case, is not the last word.

RECORD CITATIONS

"[A.__]" refers to the Appendix of this petition; "Dkt. No. __" means docket entries in the main Chapter 13 case: 09 – 15332; and "ECF __" cites to other filings in the lower court's record.

JURISDICTION

This Court has jurisdiction to review decisions of the lower courts, pursuant to 28 U.S.C. § 1254(1). The Eleventh Circuit issued its ruling on June 11, 2019, and this appealed is timely.

OPINIONS BELOW

The decisions in the district court and bankruptcy court bluntly refuse to afford constitutional due process, or equal protection under the law. [A.1-11]. Besides, if true, would render Florida's foreclosure law unconstitutional for preempting federal law. The district and bankruptcy courts, wrongly concluded that the (second) ***unapproved*** postpetition sale[4] *properly* occurred on August 31, 2009, even though petitioner was known to be forward deployed abroad performing military service, and had an active Chapter 13 case pending stateside. However, they make that finding by incorrectly assuming the bankruptcy automatic stay was lifted by Dkt. No. 28, purportedly **instantly** dismissing the Chapter 13 petition --

[4] The lower court's analysis also wrongly ignores the FIRST postpetition sale which occurred five months earlier, on March 30, 2009, but was never rescinded [A.35]; another willful violation of 11 U.S.C. § 362(a).

without notice. [A.3-11]. That conclusion is entirely fallacious, unconstitutional, and an abrupt unnecessary departure from the well-known legal doctrine that unauthorized postpetition collection action against § 541(a) bankruptcy property violates the automatic stay, and is therefore void[5], not voidable.

Oddly, here the lower courts found that even after commencement of a Chapter 13 case, the compounded *unapproved sales* on March 30 and August 31, 2009 [A.25 & 34] are permissible, and not in violation of any law, including the SCRA and the Bankrupt Code. They reached that curious finding, notwithstanding protections explicitly enacted to prevent persons who return home safely after arduous military service, from suddenly finding themselves homeless due to a forced sale of their home, while actively serving overseas. So, to obtain such bizarre results here, they decided that someone in full statutory compliance with the SCRA and Bankruptcy Code, who is sent overseas to perform title 10 military duty on the frontlines, may lose their home stateside -- without due process -- if a bankruptcy court promises to vacate its (unconstitutional) order. . . "*in the next couple days*", but then fails to do so. [A.5, line 7].

The chief problem with that line of reasoning is that it does not make any distinction between acts which are merely *erroneous* and appealable -- versus those that are inherently *invalid* for violating due process, faulty jurisdiction, or some other fatal defect. Take for instance the orders *purporting* to dismiss the Chapter 13 case during the debtor's known military service; Dkt. Nos. 28, 29, & 67.

---

[5] *See in re Kalb v. Feuerstein*, 308 U.S. 433, 60 S. Ct. 343 (1940). Although a tiny minority of appellate courts still hold § 362(a) stay violations are voidable not void, if the court may properly grant retroactive relief under § 362(d).

Particularly Dkt. Nos. 28 (and 29) show the ex-parte dismissal -- without proper notice -- was in blatant violation of due process. [A.29-30]. Because that order is unconstitutional, and hence inherently invalid, it is also ineffective to dissolve the statutory stays in effect, by operation of law. Especially as a means to evade ostensibly onerous Rule 3001 filing requirements[6].

Furthermore, the decisions below repeatedly fail to show why the *compulsory* provisions, such as § 3936(b) of the SCRA, and § 349(b)(3) of title 11, do not apply. By ignoring these statutory mandates and the incontestable facts of this case, the courts below have departed unnecessarily and abruptly from established legal principles, and well settled law.

On September 1, 2009, the day *after* the <u>second compounded unapproved postpetition</u> sale on August 31, 2009, at 1:18 pm EDT, in tacit approval, the bankruptcy court merely paid lip-service to the SCRA, issuing Dkt. No. 33 [A.37-38] purporting to vacate its *unconstitutional* dismissal. That order states in part:

> "
> 1) The Motion [DE 30] is GRANTED.
> 2) This Court's *Order Dismissing Case for Failure to Make Pre-Confirmation Plan Payments and For Failure to Appear at the 341 Meeting of Creditors* [DE 28] is VACATED and this case is REINSTATED.
> 3) Pursuant to 50 U.S.C. app. §§522(b) and (d), the above styled bankruptcy case, and all proceedings therein are STAYED until April 30, 2010.
> 4) The Debtor shall inform the Court if he returns from his deployment before April 30, 2010.
> 5) Objections to this Order may be filed with the Court within ten (10) days of the date of entry of this Order, at which time the Court shall set a hearing on said objections.
>
> ### "

[6] Bankruptcy Procedure Rule 3001, and elsewhere, mandates that a creditor must file certain evidence sufficient to establish that a properly <u>*perfected*</u> secured claim actually exist against the debtor's home, by attaching specific documents to official Proof of Claim form; B-10.

Dkt. No. 33 notwithstanding, the lower courts now find that the illusory lapse in ***statutory*** stay was just long enough to allow § 541(a) property of the estate to be fleeced. Essentially reasoning that the SCRA and Dkt No. 33 -- are too little, too late. Thus, they wrongly concluded that in bankruptcy, an *unapproved postpetition* sale[7] is confirmable *post-dismissal*, without the bankruptcy court's ***exclusive*** *preapproval*; ECFs 47 & 40. [A.1-15]. However, that conclusion is obviously baseless, and totally unfounded in the law. It is also entirely contradictory to the core facts here, and even opposes Dkt. No. 33 itself.

On October 30, 2009 -- over two months after the *second* illicit sale, and seven months after the first *uncancelled* sale on March 30, 2009 -- an alleged "*late claim*" was filed seeking payment from the estate; Dkt. Nos. 37-40, 49. [A.40-43]. That fact alone, creates an absolute judicial estoppel bar against later claims that the [unlawful] postpetition sale from August 2009, is valid – independent of even the bankruptcy court's pre-approval.

Furthermore, on May 14, 2010, during yet another *unnoticed* hearing, the trustee (not the court) improperly exercised "judicial powers" by covertly and off-the-record, allowing as *unopposed*, facially false "late claims" against the Chapter 13 estate; Dkt. No. 38. [A.40-43]. On August 17, and October 18, 2010, those claims were refiled again and renewed, for payment from the estate; Dkt. No. 49. These facts further present a sufficient judicial estoppel bar against the disingenuous

---

[7] The order of the bankruptcy court in case: 16-01046, ECF 47 summarily permanently dismissing the preapproved Adversary Complaint, and elsewhere, incorrectly refers to a sale on August 31, 2015, instead of August 31, 2009. [A.14, ¶2(a)]. Whether a typo or not, there clearly is no **August 2015** judicial sale in this case.

contentions conjured up after the fact, arguing that the Chapter 13 real property had already been sold -- fourteen months earlier -- on August 31, 2009; even absent relief from stay as prescribed by the Code and applicable Bankr. P. Rules; *Id* 11 U.S.C. § 362(d).

On November 12, 2010, after petitioner was recalled to Active Duty and legally protected by the SCRA[8], an improper preconfirmation hearing was held in his absence where the court abruptly decided that it would deny confirmation, and dismiss the Chapter 13 case, which was dismissed by Dkt. No. 67 seven days later, on November 19, 2010. [A.45-47]. Therefore, and pursuant to the dismissal statute § 349(b)(3), unless the order of dismissal states otherwise -- which it clearly does not -- the dismissal statute *mandates* that dismissal ***shall*** operate to reset the prepetition "status quo ante". Consequently, Dkt. No. 67 operates, ***by law***, to further extinguish the illicit postpetition sales on March 30, and August 31, 2009; period. [A.25, A.34, & A.45-46].

About four years after the fact, on February 1, 2013, absent the exclusive pre-consent of the bankruptcy court, and with utter disregard and jurisdictional indifference, the Florida foreclosure court claimed to retroactively (nunc pro tunc) validate the unapproved 2009 postpetition sale that was already permanently extinguished by Dkt. No. 67 on November 19, 2010, and by operation of law. Although nowhere in the bankruptcy clause of the Constitution (Art. III), nor under applicable federal law title 28 U.S.C. §§ 1334 & 157(G), are state courts given

---

[8] Pursuant to 50 U.S.C. §§ 3917(a) and 3911(3) the applicable SCRA protections are triggered on the date title 10 military orders are ***received*** by Reservist Servicemembers.

authority over exclusive bankruptcy jurisdiction and *title 11* ***core matters*** such as *terminating, annulling, or modifying* § 362 stays; [A.49-50].

In December 2015, the bankruptcy court rightly reopened the matter, and pre-approved filing adversary proceedings for the stay violations. In open court, and on the record, it stated, in part:

> "- - - COURT: ...It has nothing to do with the SCRA. It has to do with the imposition of the automatic stay, in a form of order that I no longer use, exactly because of the issue that came up in this particular case. **Has there or has there not been a ruling with regards to the applicability of the automatic stay in connection with the second foreclosure sale on the 31st of August, 09.**
> PEREZ-MARTINEZ: Your Honor, the sale had taken place before your order was entered - - -
> COURT: ***I vacated the dismissal of the case,*** *which means the stay was retroactively in effect, including the day before I entered the order,* which means **the sale was void under 11th Circuit case** - - -".

(Emphasis added); *See December 16, 2015, Transcript of Hearing to reopen CH 13.*

Based on this, and orders emanating from that hearing [A.16-17], the *preauthorized* Adversary Complaint was timely filed, and discovery opened; Dkt. No. 96 & ECF 01, & 27-29. [A.12, & A.13-22]. But on April 12, 2016, the bankruptcy court again abruptly *permanently* dismissed the preapproved adversary proceedings; ECF 47, [A.9-15], and imposed over $15,000 in abusive sanctions for filing the *preauthorized* complaint. Thereby, further violating due process, and denying the right to a fair trial.

Such actions again directly contradict the bankruptcy court's own statements that. . . "***the sale was void under 11th Circuit***" binding authority. Instead, to

conclude that extinguished ***unapproved*** compounded[9] postpetition sales (from August 2009) do not violate any stay(s). By ignoring binding precedent, it then curiously supplants same with inapplicable, unauthoritative non-appellate *Florida* caselaw[10] unrelated to, and clearly distinguishable from, the specific facts in this SCRA case.

The flawed analysis in this case, in ECF 47 & 40, start by ignoring all docket entries between Dkt. No. 28, through Dkt. No. 67. It also fatally disregards statutory extinguishment annulling *self-help* postpetition sales, due to the mandatory effects of the dismissal statute, § 349(b)(3) and Dkt. No. 67. Besides, its finding that the bankruptcy court did not have ***exclusive*** jurisdiction over § 541(a) bankruptcy property sold from the estate, without its proper prior consent, is completely false and contradicts federal law, and Dkt. No. 33 per se. [A.10, ¶2].

These indefensible rationales merely allow for continued repeated violations of federal bankruptcy jurisdiction. Thus, it is an improper use and misconstruction of the § 105(a) powers granted by Congress to bankruptcy courts for . . . *entry of all orders, judgments, and decrees necessary* ***to enforce the bankruptcy code.*** A grant which does not empower it, nor any court, to rewrite nor disregard whole sections of federal law -- including: 11 U.S.C. §§ 362(a), (k), and 349(b)(3). Nor

---

[9] The second unlawful postpetition sale on August 31, **2009**, was intentionally **compounded on top of** the prior sale illegally held on March 30, **2009**, also violating the statutory stay, and was never properly rescinded nor set aside. Hence, precluding yet another foreclosure sale from occurring -- even if authority to sell CH 13 property could be shown, which it cannot. [A.40-43].

[10] See Florida cases used as "authority" *in re Brown*, 290 B.R.415,421 (Bankr. M.D. Fla. 2003) and in re *Hill*, 305 B.R.100, 107-108 (Bankr. M.D. Fla. 2003); both are noncontrolling and, plainly distinguishable from the instant case.

grants it authority to turn the Code on its ear, solely to incentivize and reward illicit postpetition collection activities in flagrant violation of federal law.

Sections 1334(a) and 157 of title 28 United States Code expressly give *bankruptcy courts* "original and *exclusive* jurisdiction of all cases under title 11.". They also "have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11."; *Id.* 28 U.S.C. § 1334(b). "[N]othing in that section vests the states with jurisdiction over a *core bankruptcy proceeding*, including . . . 'motions to terminate, annul, or modify the automatic stay"; *Gruntz v. Cnty. of Los Angeles,* 202 F.3d 1074, 1083 (9th Cir. 2000).

On appeal, on December 27, 2017, the district court eventually affirmed, after its mysterious and inexplicably lengthy delay of nearly two-years; case:16-cv-80837. Similarly, its flawed analysis begins by wrongly presuming that the statutory stays in effect were somehow dissolved by Dkt. No. 28 -- a facially unconstitutional *instant* dismissal. Further, it essentially reasons that a debtor's § 1322(b) rights and property of a Chapter 13 estate may be legally sold -- absent the bankruptcy court's exclusive pre-approval; ECF 40. So it wrongly concludes that the home could not be revested by a preconfirmation dismissal, on November 19, 2010, since the [second *unauthorized*] postpetition sale had "transpired" ***pre-dismissal***. Yet it cites no legal authority for that result; ECF 40, pg. 4, ¶ 3. Furthermore, it erroneously held that the fundamental question about *standing* to foreclose a mortgage (fraudulently)

obtained -- without a valid note -- is irrelevant now, and should have been raised in the state court's (*summary*) proceedings[11]; *Id.* [A.6], footnote 3.

On further appeal, without deciding the merits the Eleventh Circuit affirmed, on June 11, 2019. It based its per curium decision solely on *alleged* deficiencies in the initial brief [A.1, 2]. Timely petition for a writ of certiorari ensued on the solid grounds that, even under de novo review, ample, independent, self-evident instances here show how the bankruptcy court repeatedly violated the debtor's constitutional rights to due process and equal protection: First, by immediately dismissing the Chapter 13 case without notice as mandated by § 1307(c) of the Code; Dkt. Nos. 28 & 29, [A.28–30]. And, by its other actions and decisions supportive of the illegitimate collection activities that willfully violated expressed provisions of federal law. Besides, here the *multiple* unapproved ***postpetition sales*** on March 30, and August 31, 2009, plainly show the utter disregard for equal protection and due process rights. [A.7-11, & A.27-30]. Defective acts that are constitutionally invalid, and hence void.

REASONS TO GRANT THE WRIT

This SCRA-bankruptcy case is an ideal vehicle to at least clarify, if not strengthen, laws tied directly to the common defense of the United States. It provides a perfect opportunity to review [mis]construction of entire sections of federal law, and constitutionally defective abbreviated legal proceedings permitted against persons attempting Chapter 13 repayment plans, instead of outright debt

[11] It is established legal doctrine that the issue of standing is relevant at every stage of legal proceedings, even on appeal, and may be raised by the court, sua sponte.

liquidation. Thus, it potentially impacts an untold number of bankruptcy cases. The Eleventh Circuit's response, if permitted to be the last word, merely shows how the most vital provisions of the SCRA and the Bankruptcy Code may be easily gutted and skirted. That this petition is even needed, indeed suggests that due process violations in the lower courts against Chapter 13 debtors are not taken very seriously.

Regarding applicability of the SCRA-2003, one of the strongest arguments for granting this petition comes straight from the words of the bankruptcy court itself. These give a clear enough picture of the lingering ambiguity, and misconstruction of the statute:

> " * * *
> THE COURT: And I have a funny feeling,
> having read all of the case law in this area, that I
> don't think I have much discretion in granting the
> stay. Some judges feel that there's more discretion,
> but I do not think so. So, what I'm going to do is enter the order. The order will be entered in the next couple of days. You'll be required to serve it on all creditors in the case. They'll have a ten-day objection period. If there are any objections, I'll have another hearing about whether or not the standards have been met, if anybody objects. Okay.
> MR. HUNTER: Okay.
> THE COURT: Very good. I'm going to fashion my own order on this.
> (The proceedings were concluded.)
> * * * "

See August 27, 2009 hearing transcript Page 5; Motion to Vacate [instant] Dismissal [Dkt. No. 30]

That uncertainty about when the SCRA requires a *judicial* or *statutory* stay is a familiar dilemma. It is, in fact, a vital question dating back to one of the first cases this Honorable Court considered about special protections provided for

military service; *See re Boone v. Lightner,* 319 U.S. 561, 575, 63 S. Ct. 1223, 1231 (1943).

The decisions in this case tactfully by-pass that point. They also fail to make proper distinctions between ordinary appealable errors, versus those which are inherently unconstitutional -- like the dismissal without notice on July 1, 2009; Dkt. Nos. 28 & 29. [A.29-31]. That vital distinction makes the vast difference between lawful and unlawful orders. This rare SCRA-bankruptcy dispute presents questions entitled to de novo review, solely based on the profoundly flawed reasoning in the bankruptcy court, and the district court. Yet the Eleventh Circuit simply failed to distinguish the glaring due process defects. This Court should grant review.

I. THIS CASE PROVIDES AN IDEAL VEHICLE TO CLARIFY WHETHER DISMISSAL OF A BANKRUPTCY PETITION WITHOUT PREREQUISITE § 1307(c) NOTICE AND HEARING VIOLATES DUE PROCESS, AS THE NINTH CIRCUIT HAS HELD SINCE 1988

The Constitution provides that *"... No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."; Id.* U.S. Const., 14th Amend.

The Constitution therefore promises to protect us from judicial acts that violate due process, resulting in deprivation of life, liberty, or **property**. Yet still, the faulty analysis performed in this case is premised chiefly on an instantaneous dismissal issued on July 1, 2009 -- even after the debtor was known to be involuntarily deployed by the U.S. Military to the Persian Gulf for a year.

Bankruptcy Court Partial Docket; CH 13 Case: 09-15332

Filing Date	#	Docket Text
06/30/2009	27	Trustee's Request for Entry of Order Dismissing Case for Failure to Make Pre-Confirmation Plan Payments Filed by Trustee Robin R. Weiner. (^Weiner2, Robin) **(Entered: 06/30/2009)**
07/01/2009	28 (2pgs)	**Order Granting Trustee's Request[12] for Entry of Order Dismissing Case** for Failure to Make Pre-Confirmation Plan Payments (Re: # 27) **Case is Dismissed** with a Prejudice Period of 180 Days. [Filing Fee Balance Due $54.00] (Fleurimond, Lucie) **(Entered: 07/01/2009)**
07/03/2009	29 (3pgs)	BNC **Certificate of Mailing**[13] Order Dismissing Case (Re: 28) Order Granting Trustee's Request for Order Dismissing Case for Failure to Appear at the Meeting of Creditors and for Failure to Make Pre-Confirmation Plan Payment(s). **Service Date 07/03/2009**. (Admin.) **(Entered: 07/04/2009).**

It is entirely apparent, and self-evident from this record alone, [A.30-32], namely Dkt. Nos.:27-29, that the instantaneous dismissal occurred in violation of basic due process[13], without notice and hearing, and blatantly violated the Bankruptcy Code itself. See *In re: Krueger* 88 B.R. 238, 241-42 (B.A.P. 9th Cir. 1988); holding that dismissing a CH 13 case without § 1307(c) statutory "Notice and hearing" violates due process, and is void. It is also difficult to imagine the urgent

[12] Dkt. No. 28, the immediate dismissal order, cites as authority Bankruptcy Local Rules 3070-1(C) and 1017-2(B)(2). If true, as applied here, these local rules are unconstitutional and must be declared so. (Footnote-7 for emphasis; not on official BK docket).

[13] Furthermore, the clerk filed Dkt. No. 29, CERTIFYING that no proper notice was afforded. Because, the court mailed notice to **debtor** on July 3, or 3 days **AFTER** issuing the (unconstitutional) immediate dismissal order on July 1.

necessity to instantly dismiss a pending Chapter 13 petition without any legal notice whatsoever, except nefarious motives to harm the debtor -- particularly someone already forward deployed overseas serving in harms-way. [A.27-38].

The Bankruptcy Code itself, repeatedly directs that judicial acts may be undertaken only "**after notice and a hearing**". The "*hearing*" requirement actually means "*opportunity for a hearing*", since the drafters intended matters to go without a hearing when it is "*appropriate*" to do so. Section 102(1) of the Code defines the phrase "*after notice and a hearing*" to mean after -- such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances. Subsection (1)(B) says that "*after notice and a hearing*" (B) authorizes an act without an actual hearing if such notice is given properly and if -- (i) such a hearing is not requested timely by a party in interest; or (ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act. But in this instance, clearly there was no proper notice, nor opportunity to be heard, nor to appeal, afforded prior to *instantly* dismissing the case -- as an improper means of lifting the automatic stay, solely to help an illicit party circumvent and evade key provisions of the Code. [A.29-31; & 45-46].

The flawed analysis in both the bankruptcy court and the district court focuses, almost exclusively, on the § 362 stay which they wrongly assumed was dissolved as result of an (unconstitutional) immediate dismissal order, Dkt. No. 28, on July 1, 2009. [A.7-11]. That erroneous presumption simply avoids the key issue

that is the very subject of Dkt. No. 33: whether or not the SCRA requires a judicial or statutory stay, under the circumstances of this case. Interestingly, none of the decisions below bother to mention that Congress, in providing for the national defense of the United States, also has enacted statutory protections expressly making it a ***federal crime*** to unlawfully sell servicemember-owned property during protected periods of military service, and precisely as has happened here; SCRA § 3953(d).

The SCRA was signed into law on December 19, 2003 ". . . to provide for, strengthen, and expedite the national defense" by enabling servicemembers ". . . to devote their entire energy to the defense needs of the Nation." *Id.* 50 U.S.C. § 3902. Without the court's effective enforcement of the SCRA the United State cannot meet its national defense commitments. For someone in the armed forces serving in a combat zone, a foreclosure and court proceedings back home is both a family crisis, as well as a potentially deadly distraction from the military mission. The issues involved in this case then offer this Honorable Court a textbook example of exactly why the SCRA exists, and why it should be enforced; Dkt. No. 33. [A.27-39].

However, since the applicable *statutory* stay(s) were never lifted by an improper instantaneous dismissal order, Dkt. Nos. 28, it necessarily follows that the <u>second</u> postpetition unapproved sale is also void and unconfirmable on February 1, 2013. But even more so, without the bankruptcy court's pre-consent so many years after dismissal. [A.47-48]. *See in re Kalb v. Feuerstein*, 308 U.S. 433, 60 S. Ct. 343 (1940); Judicial acts violating bankruptcy jurisdiction, are void. In light of the

unambiguous law and the core facts of this case, entry of title by the state court's exclusive actions, overrules Congress' unmistakable intent to protect those called to bear arms, and in effect supplants federal authority over bankruptcy and turns the Code on its ear. Here, the lower court refuses to defend the Constitution, by making and affirming unconstitutional orders which are invalid from inception. And by refusing to follow established law, for fear its outcome would be "*troublesome*" for willful stay violators. ECF 47. [A.9, ¶2].

Even if these questions in this particular context are issues of first impression for this Honorable Court, there is reliable on point authority from the Ninth Circuit. This fact also suggests this Court should grant certiorari to weigh-in on the important points, potentially directly affecting the national defense, and venerable military families. Congress, by passing these provisions, has essentially decided it is unfair and distracting for persons performing military service to the United States, to simultaneously have to defend themselves in civil litigation. The lower courts are without authority to usurp Congress on this critical issue, by requiring persons actively defending the Country, to at the same time defend themselves in proceedings that are customarily subject to postponement, even for nonmilitary debtors.

II. THE COURT SHOULD REVIEW THIS CASE TO CLARIFY WHETHER § 3936(b) TOLLS CONFLICTING STATE LAW; AND WHETHER § 349(b)(3) REVESTED THE CH 13 ESTATE IN THE DEBTOR

A. The SCRA's Mandatory Tolling Provisions Preempted A Judicial Sale Under Fla. Sta. § 45.031

Since October 17, 1940, federal law specifically forbids terminating *Redemptive Rights* to servicemember-owned real property, during Active Duty service. The Act's applicable tolling provisions are found in Article II, under General Relief, § 3936, and deal with **compulsory** (not optional) requirements which *must* be observed *before* the right to redeem real property can be legally extinguished within a period of military service, precisely as this case involves. The statute, in substance, provides that "*the period of military service shall not be included in computing any period . . . limited by any law . . . for the bringing of any action . . . or for the redemption of real property sold or forfeited to enforce an obligation, . . .* ".

Here, no irony is wasted in the fact that this case also involves specific federal protections already examined by *Leffers*[14], a landmark post WWII era U.S. Supreme Court decision in 1948. There, the Florida Supreme Court also sought[15] to limit provisions Congress provides to persons whose real property is sold during their absence performing military service. The normal effect of this particular section of federal law is to toll the period of redemption, or any time limited by law, to exclude periods of Active Duty -- regardless of material effect. *See in re: Hendrick*

---

[14] See in re *Le Maistre v. Leffers* 333 U.S.1 (1948).
[15] In re *De Loach v. Calihan*, Fla., 30 So.2d 910.

v. Bigby, 228 Ark. 40, 42 (Ark. 1957). For a lawful foreclosure sale to occur, the servicemember's Redemptive Rights **cannot** be terminated by the sale itself, and MUST be expressly preserved in the order authorizing such sale. Verbatim, the plain language of the law provides as follows:

SCRA § 3936(b)
(Statute of limitations)

(b) **Redemption of Real Property**
A period of military service may not be included in computing any period provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) Inapplicability to Internal Revenue Laws
This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States.

However, under Florida's novel system of foreclosure[16] since mid-1994, the expressed purpose of the clerk promptly certifying a foreclosure sale ***is*** to terminate the *right of redemption.* See *In re Jaar,* 186 B.R. 148, 154 Bankr MD Fla. (1995); holding in Florida, the Clerk "terminates" property ownership rights by filing a Certificate of Sale. It is designed to, at completion of judicial foreclosure auctions, provide winning bidders or prospective owners greater certainty and assurance against other parties frustrating the bid results. By ministerially axing the right to redeem instantly upon the clerk certifying the regularity of a sale, the result is far more conclusive. Simply restated, under Florida law once the clerk certifies that a

[16] In mid-1994, the Florida legislature amended Fla. Stat. § 45.0315 to expressly provide for termination of Redemption Rights when the Certificate of Sale is filed. Hence, the right to redeem real property during a judicial foreclosure, runs up until the moment just before the clerk files a certificate to certify the results of a properly advertised, fair sale. Accordingly, F.S. § 45.0315 provides that the right of redemption expires upon the filing of the certificate of sale, ***unless*** a later time is specified in the judgment, order, or decree of foreclosure.

foreclosure auction was properly advertised and conducted like a regular sale the owner's legal right to redeem terminates. The Florida law states:

Title VI, Fla. Sta. Chapter 45.031(5)

> **Right of redemption.** -- At any time before the later of the filing of a certificate of sale by the clerk of the court or the time specified in the judgment, order, or decree of foreclosure, the mortgagor or the holder of any subordinate interest may cure the mortgagor's indebtedness and prevent a foreclosure sale by paying the amount of moneys specified in the judgment, order, or decree of foreclosure, or if no judgment, order, or decree of foreclosure has been rendered, by tendering the performance due under the security agreement, including any amounts due because of the exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor. **Otherwise, there is no right of redemption**. (Emphasis added).

Generally, if two statutory provisions contradict each other, like here, the ordinary rules of statutory construction and interpretation dictate the contradiction should be resolved for harmony, if possible. But given the specific facts and circumstances of this case, there is no way to harmonize the mandatory tolling requirement of federal law, with Florida's post-sale *zero redemption rights* requirement, to obtain a **lawful** foreclosure sale. Therefore, in this instance the foreclosure sale, [A.25 & A.34], is a legal nullity, as if no such sale had been made.

The Supremacy Clause of the U.S. Constitution (Art. VI, cl. 2) dictates that where there is a regulatory clash, like this, federal law is supreme to state law; not vice versa. Because this situation represents a direct conflict between Florida statute § 45.0315 and mandatory tolling provisions in the SCRA, among other things, the net result is: **during a period of military service, there can be no valid foreclosure sale of servicemember-owned real property in Florida,**

unless that military service is properly accounted for in the judgment or decree.

Under the Constitution's requirement for the supremacy of federal law, § 3936(b) ordinarily operates to simply toll and extend the applicable time of redemption until at least *after* the owner's military service ends. But, due the peculiar novelty of § 45.0315 involved in Florida's foreclosure statute[17], the mandatory tolling requirements of § 3936(b) operate to preempt the judicial foreclosure sale entirely . . . *if the final order fails to adequately toll a relevant period of Active Duty military service.* The sale held, in this instance, pursuant to the final judgment [A.42–43] is legally invalid specifically because [A.43, ¶6] the order clearly does not properly preserve constitutionally protected § 1322(b) right of redemption. Otherwise, Fla. Sta. Chapter 45.0315 would nullify plain provisions of federal law and the U.S. Constitution. Therefore, at the very least, if true, the decisions below in this case render Florida's law, § 45.0315, unconstitutional for illegally preempting federal law. So, completely contrary to the lower court's flawed analysis and false conclusion, [A.3-11], under that analysis, the illicit second sale [A.34] ***must*** also be declared unconstitutional. Unless the sale is derived from proceedings under the IRS exemption stated in § 3936(c).

Consequently, the unambiguous self-executing statutory tolling provisions of the SCRA § 3936, subsection (b), operate during protected periods of military

---

[17] F.S. § 250.84, Florida Uniformed Servicemembers Protection Act, and Fla. Stat. Ann. §§ 250.5201 to 250.5205, are state equivalent laws providing rights intended to mirror and help enforce the SCRA.

service to impose ex post facto prohibitions against all sixty-seven clerks[18] throughout Florida, including Palm Beach County, from issuing a valid "*Certificate of Sale*" under title VI, Fla. Stat. Chapter 45.0315, if the sale indeed violates federal law. And in this specific instance, the Palm Beach County Clerk proceeded unconstitutionally, by filing [A.35], a statutorily barred "Certificate of Sale". Thereby, flouting long established Congressional prohibitions against such efforts to axe federally protected § 1322(b) Redemptive Rights during military service. Thus, the clerk was legally required to immediately cancel the state's *second* illicit sale [A.34-38].

Accordingly, the SCRA's mandatory tolling provisions prohibited and preempted a foreclosure sale from ever occurring on August 31, **2009,** during the owner's known deployment abroad performing military service. It necessarily follows therefore, even under Florida's judicial foreclosure mechanism itself, that the real property in controversy could not lawfully be subject to a *foreclosure sale* terminating the *Right of Redemption* when the certificate is filed – completely contrary to the specific conclusions of the lower courts here. [A.3 - A.11]. Especially since the owner's military service [A.39], was at that time indisputable, fully known, and well documented.

Therefore, the sale purportedly "confirmed" on February 1, 2013, [A.47 - 48], is legally void, as specifically outlawed by Congress since October 17, 1940, at title

---

[18] No one can seriously argue that the County Clerk here did not disregard the § 3936(b) tolling mandate of the SCRA, and § 3953(c), by filing a second **compounded** "Certificate of Sale" on August 31, **2009**, during the owner's documented deployment and military service. There is no **August 2015** judicial sale, in this case.

50 U.S.C. §§ 3936(b) & 3953(c); Pub. L. 108-189. Hence, it is not confirmable without violating title VI, Fla. Stat. § 45.0315, the SCRA §§ 3936(b) & 3953(c), and the Constitution's due process guarantees and supremacy clause.

B. Under 11 U.S.C. § 349(b)(3), the CH 13 Estate and § 1322(b) Rights Revested in Debtor

Next, the chief statutory mechanism Congress provides to efficiently unwind an unsuccessful Chapter 13 bankruptcy filing is the dismissal statute stated at § 349; a very straight forward legislative device. In short, except for things explicitly enumerated, and those otherwise provided specifically by order of the bankruptcy court, it operates in essence to "*reset the prepetition status ante*" by placing all parties back into their legal positions, as on the petition-eve. Here, that is March 25, 2009, because the petition date is March 26, which is obviously a point in time prior to both illicit sales on March 30, and August 31, 2009. This fact alone sufficiently proves that, unless Dkt. No. 67 -- the preconfirmation dismissal order [A.45–46] -- provides otherwise, which it clearly does not, both of the self-help postpetition sales, [A.25 & 34], were permanently snuffed out by statutory operation of § 349(b)(3) and Dkt. No. 67. [A.45 - 46]. The intent and language of the statute regarding its general effects, are crystal clear:

> 11 U.S.C. § 349
> (Effect of dismissal)[19]
>
> (b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title -
>
> *
>
> *
>
> *

[19] The entire statute is cited at Appendix-V; [A.48-49].

> **(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.**
> (Emphasis added).

Such plain statutory language leaves absolutely no doubt whatsoever that unless the order of dismissal, Dkt. No. 67 here at [A.45 - 46], for cause provides otherwise, the result of this section of the Code is to ***automatically*** revest property of the Chapter 13 estate in the debtor, not excluding the real property improperly "sold" *twice*. Simply restated, § 349 operated to instantly even further extinguish the postpetition sales, and invalidate other collection actions taken without the bankruptcy court's exclusive consent between the petition date, March 26, 2009, and its dismissal on November 19, 2010. Hence, it necessarily follows that the August 31, 2009 sale is precluded from a later purported confirmation -- nearly four years afterwards on February 1, 2013 -- especially by the state foreclosure court's improper exclusive actions [A.47 & A.48]. Therefore, the so-called sale confirmation here is constitutionally invalid; end of story. There is no need to reinterpret, nor rewrite, applicable provision of federal law for a different result.

Bankruptcy Court Partial Docket; CH 13 Case: 09-15332

Filing Date	#	Docket Text
11/19/2010	**67** (2pgs)	**Order Denying Confirmation and Dismissing Chapter 13 Case.** Dismissal Shall Be with No Prejudice. [Filing Fee Balance Due: $0.00]. (De Lara, Natalia) **(Entered: 11/19/2010)**

Here, this indisputable fact alone is by itself outcome determinative. Yet still remarkably, the analysis of the lower courts - particularly the district court's -

repeatedly gets it wrong; ECF 40. [A.3 - 6]. The Court should grant certiorari to clarify the precise effect of § 349(b)(3), after a dismissal denying confirmation of Chapter 13 cases similar to Dkt. No. 67. [A.45 - 46].

III. THIS CASE PROVIDES THE COURT WITH A UNIQUE OPPORTUNITY TO ANSWER WHETHER "*PREDATED*" MORTGAGES, AS A MATTER OF LAW, AFFORD FOR SUMMARY JUDGMENTS

The central issues here hinge also on the legitimacy of a federally regulated *uniform* mortgage security instrument (or lien) which everyone agrees, was executed six days ***before*** the underlying note. This intriguing point does not concern, nor require, analysis of the note itself -- which is a different question altogether, because a valid note may be secured, or unsecured.

To be enforceable and to guard against fraudulent substitutions, particularly in bankruptcy proceedings, a mortgage (or Deed of Trust) **must** ***specifically and accurately*** identify the debt it secures. Established legal authority has long held ". . . a mortgage which purports to secure payment of a debt has no validity . . . if the debt has no existence." See *Walston v. Twiford,*105 S.E.2d 62, 64 (N.C. 1958). Furthermore, some courts have decided inclusion of an inaccurate ***date of execution*** in the instrument, or a discrepancy of just ***one day***, may render it invalid and unenforceable in bankruptcy[20]; *Id.* 11 U.S.C. § 544. The date of execution of the note and mortgage is evidently a material matter. Therefore, ***six days*** delay before executing the note, after the mortgage, is not merely a minor error to be overlooked in farce "summary proceedings". It is a substantive issue -

[20] See *in re Head Grading Co. Inc.* 353 B.R. 122 (Bankr. E.D.N.C. 2006).

otherwise neither the mortgagor, nor any court, can be sure of the decisive dates[21] controlling the transaction.

In a comparable, yet very distinct, case where the *note* is executed many days *before* the mortgage, the debt is unsecure only for those days, until the security instrument gets executed. This situation is far different from that one. Here, on the other hand, the *mortgage* was executed six days before the note -- or necessarily six days before the debt legally existed[22]. Such a *pre-executed* **"mortgage"** is indeed a legal **nullity**, unless and until a *Reformation*, or other legally effective remedy is obtained. The Holder simply therefore cannot experience a default, since the debt it purports to secure did not truly exist when the phony mortgage instrument was signed. Hence, it provides no security, nor legitimate grounds to foreclose. [A.6, FN 3].

Moreover, federally regulated *Uniform* Notes contain an explicit stipulation paragraph (§ 11) entitled *"Uniform Secured Note"* referring to protections to the Note Holder under a Mortgage "*Security Instrument*" (or Deed of Trust). Its standard language states the Mortgage is "DATED THE SAME DATE AS THIS NOTE". And, page 2 of a *Uniform* Mortgage, likewise has a provisioning paragraph (D) stipulating that the Note means "THE PROMISSORY NOTE SIGNED BY BORROWER AND DATED JUNE 23, 2005", referring to a Note executed contemporaneously and simultaneously on the same date as the Mortgage. In this

---

[21] For Adjustable Rate Mortgages (ARMs) which adjust interest rate periodically, the date of execution and (third) anniversary dates ("loan year") are vital dates throughout the contract.
[22] Since federal law mandates at least 3 *business days* to cancel or rescind residential mortgage *refinance* transactions, the exact time period would change depending on the particular day of the week the note is executed.

case however, ¶ (D) actually refers to a fictional *fictitious note* that has never existed, because there is no argument here that the note was signed on June **29th** 2005; not June 23rd.

Normally, in Chapter 13, if Rule 3001 claims are filed knowingly concealing *material defects* which could affect whether a properly "secured" claim truly exist against the estate[23], the party who knowingly files the false claim commits bankruptcy fraud – a serious ***federal crime*** subject to up to five-year incarceration and or, a steep $500,000 fine[24] per violation. Parties who knowingly fraudulently engage in concealment or bribery intended to circumvent federal insolvency laws normally *should* be held to account. Yet, in this instance the decisions below incentivize such mischief at the expense of **constitutionally** guaranteed equal protections, by officials simply closing their eyes to obviously illegal conduct. Dkt. Nos. 37-40. [A.40-43].

Foreclosure is terminal - like the fiscal equivalent to the *death penalty* for criminal offenses. Thus, it is supposed to require "strict compliance" with the law to produce a valid result. A legitimate Chapter 13 claim is not ***proven*** (nor disproven) merely on someone's say so -- there must at least be a properly perfected lien. Without a valid mortgage instrument, the foreclosure is itself **meritless**. Whether a purported *postpetition* sale is invalid due to a defective claim is an indispensable "core" matter, squarely in the purview of bankruptcy courts. Hence, where a

---

[23] 11 U.S.C. §541(a) operates when the bankruptcy petition is filed to create an estate also consisting of the debtor's §1322(b) ***Redemptive rights*** and legal or equitable property interests everywhere. The flawed reasoning in the bankruptcy court and district court, disregards this basic essential fact.
[24] Id. 18 U.S.C. 18 U.S.C. §§ 152, 1519, 3571.

foreclosure sale occurs in the absence of legal authority, there was no valid execution of the *power of sale* in the **mortgage**, thus the sale is wholly ***void***. So, the fact that an unsecure party with a phony claim has foreclosed on Chapter 13 estate property pursuant to a *fictional* power of sale falsely *assumed* to exist, is **directly** germane to the adversary proceedings. Hence, these facts alone, provide ample evidence to question the legitimacy of the alleged *uniform* mortgage instrument proffered, especially in Chapter 13 proceedings. Therefore, the bankruptcy court's *summary dismissal* ***with prejudice*** based on its own false premises and mistaken conclusions, is even further denial of due process. Whereas, the Constitution protects us from judicial acts that violate due process for the *taking of property*; ECF 47. [A.7 – A.11].

Here, the due process failure is clearly self-evident: First, by denying § 1307(c) prerequisite notice, under the circumstances, to someone performing *SCRA protected* military service abroad; Dkt. Nos.: 27-29. Additionally, the farce summary adversary proceedings below even further violated the right to a fair trial and to test the veracity of claims made based, admittedly, on facially bogus mortgage documents obtained without a sufficiently executed *predicate* note[25]. [A.51 - 54]. Hence, the courts below simply applied the wrong standard in deciding this extraordinary SCRA-bankruptcy case, by not recognizing and properly distinguishing that failure to afford constitutionally *guaranteed due process*, and

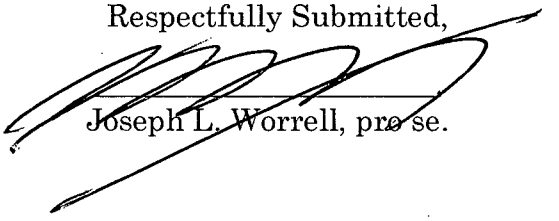
[25] That an essential plea for *Reformation* of the known mortgage defects is starkly absent in both the Bankruptcy and foreclosure proceedings - even though the defective mortgage issue is indisputable, and persistent violations of due process here, is a sufficient showing of malfeasance and bad faith, intended to entirely avoid and circumvent the normal evidentiary discovery process via illegitimate "summary proceedings".

equal protection, innately invalidates the actions – regardless of whether or not they are ever successfully appealed.

CONCLUSION

The Court should grant this petition for a writ of certiorari and answer the important questions it poses which were wrongly decided in the district and bankruptcy courts, then left unanswered by the Eleventh Circuit Court of Appeals. Questions directly related to key protections afforded persons serving in the common defense of the United States, along with the most foundational features of Chapter 13 repayment plans, under the Bankruptcy Code.

Respectfully Submitted,



Joseph L. Worrell, pro se.

Dated: February 5, 2020.