NO. 19-82

IN THE

Supreme Court of the United States

PAUL V. CANNON,

Petitioner,

v.

BANK OF AMERICA, NATIONAL ASSOCIATION; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; BANK OF NEW YORK MELLON AS TRUSTEE FOR CWABS ASSET-BACKED CERTIFICATES TRUST 2007-9, AND SPECIALIZED LOAN SERVICING LLC,

Respondents.

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

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FOR BANK OF NEW YORK MELLON AS TRUSTEE FOR CWABS ASSET-BACKED CERTIFICATES TRUST 2007-9, AND SPECIALIZED LOAN SERVICING LLC

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Dated: August 14, 2019

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RESPONDENT BANK OF NEW YORK MELLON AS TRUSTEE FOR CWABS ASSET-BACKED CERTIFICATES TRUST 2007-9'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29, Bank of New York Mellon as Trustee for CWABS Asset-Backed Certificates Trust 2007-9 ("BNYM") hereby files its corporate disclosure statement. BNYM is a New York State banking institution, which is a wholly-owned subsidiary of The Bank of New York Mellon Corporation, a publicly traded company (NYSE:BK).

RESPONDENT SPECIALIZED LOAN SERVICING LLC'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29, Specialized Loan Servicing LLC ("SLS") hereby files its corporate disclosure statement. SLS is a limited liability company formed in the State of Delaware. SLS is wholly-owned by Specialized Loan Servicing Holdings, LLC, a company whose ultimate parent is Computershare Limited, a publicly traded company on the Australian stock exchange.

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SUMMARY OF THE ARGUMENT

Petitioner Paul Cannon's ("Cannon") petition for writ of certiorari should be denied because it does not present any compelling reasons for this Court's review, but rather presents a garden variety claim of legal error in the dismissal of his Complaint for failure to state a plausible claim for relief. Moreover, the underlying issues relate to the straightforward application of well-settled state law to the plain terms of a mortgage loan contract. There is no federal issue arguably relevant to, much less controlling of, this case. Although Cannon claims error in the dismissal, which such error Respondents[1] deny, this does not present a proper ground for review by this Court.

ARGUMENT

Cannon's petition for writ of certiorari presents no compelling reasons for this Court to exercise its judicial discretion and grant the same. *See* Supreme Court Rule 10. This case does not present a Circuit split with respect to an important matter, or a split between the United States Court of the Appeals for the First Circuit ("First Circuit") and the Massachusetts Supreme Judicial Court, or an instance where the First Circuit has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by the United States District Court for the District of Massachusetts ("District Court"). *See id.*, Rule 10(a). Nor has the First Circuit decided *any* question of

[1] Respondents Bank of New York Mellon as Trustee for CWABS Asset-Backed Certificates Trust 2007-9 ("BNY Mellon") and Specialized Loan Servicing LLC ("SLS") (together, "Respondents").

federal law, much less an important one that has not been, but should be, settled by this Court or that which conflicts with relevant decisions of this Court. *See id.*, Rule 10(c).

Rather, this case presents an "asserted error consist[ing] of … the misapplication of a properly stated rule of law." *See id.* In such circumstances, "[a] petition for writ of certiorari is rarely granted." *Id.* Namely, the petition concerns the First Circuit's affirmance of the District Court's dismissal of Cannon's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a plausible claim for relief. There is no dispute that the District Court applied the correct law pertaining to a Rule 12(b)(6) motion, namely, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d. 929 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), and their progeny, in dismissing Cannon's Complaint. The District Court expressly stated on the record at the motion hearing that it was taking Cannon's allegations as true but nevertheless determined that the Complaint failed to state a plausible claim for relief. *See* Appendix to Cannon's Petition ("App."), A-9 ("I have to take everything your way in your complaint … I'll take everything in your complaint as true, every factual allegation in your complaint as true, and having taken it as true, … even then you don't win, and so legally I have no choice but to dismiss your action.").

The sum of Cannon's petition is that the District Court simply misapplied the *Iqbal* and *Twombly* standard in dismissing his Complaint, and the First Circuit erred in affirming such dismissal. This is insufficient to bring this case within the scope

of proper review in this Court. *See* Supreme Court Rule 10.

Moreover, the crux of Cannon's Complaint was that his residential mortgage loan was illegally securitized without his knowledge or consent. This presents a straightforward issue of contract interpretation, as the plain terms of his promissory note and mortgage provided that the note could be sold one or more times without his permission and without limitation. Massachusetts state courts have consistently construed the same or similar mortgage loans to preclude any argument of illegal securitization. *See*, *e.g.*, *Mitchell v. U.S. Bank National Association*, 95 Mass. App. Ct. 901, 903, 120 N.E.3d 349 (Mass. App. Ct. 2019) ("[T]he making of the loan and granting of the mortgage was a transaction between the Mitchells and the lender, and that transaction was entirely separate from the transaction that securitized the note and mortgage. It is the note and mortgage that govern the foreclosure process, together with the applicable law; whatever contractual rights the certificate holders may have are governed by the separately transacted securitization documents. Notably, the Mitchells cite no case or other authority for the proposition that the securitization transaction fundamentally altered the enforcement rights under the note and mortgage."). *See also U.S. Nat'l Bank Ass'n v. Ibanez*, 458 Mass. 637, 651, 941 N.Ed.2d 40 (Mass. 2011) (Cordy, J., concurring) ("The type of sophisticated transactions leading up to the accumulation of the notes and mortgages in question in these cases and their securitization ... are not barred nor even burdened by the requirements of Massachusetts law.").

As such, this case does not present a *single* issue of federal law, much less an important one, much less one that should be settled by this Court. Rather, it presents a garden variety dismissal pursuant to Rule 12(b)(6) in the face of well-settled state law concerning the interpretation of a residential mortgage loan. Cannon's invitation to the Court to effectively create new nationwide policies concerning the securitization of mortgage loans, where such securitizations are actually governed by the terms of the loans and state law, must be rejected as both beyond the scope of this Court's powers and outside the proper reasons for granting a petition for writ of certiorari. *See* Cannon's Petition, p. 35 (asking the Court to "take this opportunity to help create uniformity in foreclosures nationwide, restore order to our judicial system, and send an appropriate message to the attorneys helping the criminal banking enterprise that the private policies of banks will never permanently replace the American system of law and justice.").

Respondents also briefly address one important omission by Cannon, and one misrepresentation, arising out of his Petition. *See* Supreme Court Rule 15(2). First, the First Circuit's review of Cannon's appeal from the District Court's dismissal of his Complaint was limited because of deficiencies in Cannon's briefing before the First Circuit. *See* App., A-2. The First Circuit noted deficiencies in Cannon's opening brief that rendered his claims of error waived, and proceeded to note that "[e]ven if we were to bypass any waiver, we would agree with the district court's conclusion that none of the claims advanced in the complaint states a plausible claim for relief." *Id.* Cannon's waiver in the

First Circuit precludes further review in this Court of the underlying dismissal by the District Court.

Second, Cannon intimates in his Petition that his Complaint presented a factual dispute as to the accounting of payments made and credited on his mortgage loan, and contends that the factual dispute necessitated discovery and should have survived a Rule 12(b)(6) determination. *See*, *e.g.*, Cannon's Petition, p. 30 ("[D]iscovery should have been required as a necessary element in the instant matter, to prove the facts."); *id.*, p. 34 ("If the Court was unsure that Mr. Cannon's claims of unapplied payments were, indeed, true, then it could have allowed discovery to commence, or scheduled an evidentiary hearing, or both.").

However, the Complaint did not present a dispute concerning the accounting on a mortgage loan—in other words, an allegation that Cannon made payments on the loan and those payments were not properly credited or applied, such as to create a dispute over amounts owing. Rather, any mention in the Complaint of accounting with respect to the loan was derivative of Cannon's core allegation that the loan was illegally securitized and that, as such, payments could *never* properly be applied. *See* Complaint, ¶ 73 (alleging that "purported 'note holder' never legally owned the subject loan, and could never apply any amount of any mortgage payment toward 'principal' and 'interest' as was represented in the loan documents [Cannon] was induced to sign."). Therefore, Respondents reject any suggestion that there was a factual dispute between the parties, properly raised in the Complaint, concerning the accounting on the loan. The Complaint raised a purely legal issue concerning

whether Cannon's residential mortgage loan was illegally securitized, an issue that was properly dealt with by the District Court at the Rule 12(b)(6) stage given the terms of Cannon's loan and the well-settled state law concerning the same.

CONCLUSION

Respondents respectfully request that the Court deny Cannon's petition for writ of certiorari, as it presents at most a claimed (but nonexistent) error in a garden variety Rule 12(b)(6) dismissal concerning contract interpretation and state law issues only. *See* Supreme Court Rule 10.

Respectfully submitted,

Bank of New York Mellon as Trustee for CWABS Asset-Backed Certificates Trust 2007-9, and Specialized Loan Servicing LLC,

By their attorneys,

/s/ *Christine M. Kingston*

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