ORIGINAL

19-841

Case Nos.: 15A447; 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

PETITION FOR A WRIT OF CERTIORARI

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

QUESTIONS PRESENTED

In this Florida case a federally regulated **uniform** residential Single-family Mortgage (SFM), predicated on a security instrument originated ***six days*** before a promissory note, was foreclosed in judicial "*summary proceedings*". Thereafter, during a period of military service, the subject servicemember-owned homes was sold without obtaining relief from stay, despite a pending Chapter 13 bankruptcy case. The bankruptcy court, without "notice and hearing", dismissed the petition and proposed payment plan while the servicemember-debtor was deployed overseas, giving rise to these essential questions:

1. Whether a mortgage *security instrument* created six days before the underlying promissory note is sufficiently executed provides sufficient standing to foreclose in *summary proceedings* without violating due process. Further, how long can a valid uniform mortgage security instrument predate an underlying loan note?

2. Does the "*prepetition status quo ante*" mandate of the bankruptcy Code dismissal statute, at § 349(b)(3), extinguish unapproved postpetition sales and other self-help remedies -- including

independent actions by the foreclosure court to annul or modify the § 362(a) stay without prior consent of the bankruptcy court?

3. (a) Under what circumstances does § 3932(b) of the Servicemembers Civil Relief Act (SCRA 2003) mandate a statutory or judicial stay, if a stay is requested?

(b) Even if no SCRA stay exists, pursuant to § 3917(a), does immediate dismissal of a Chapter 13 case, without § 1307(c) mandatory notice, dissolves the § 362 stay? lastly,

(c) Whether the mandatory tolling requirement of the SCRA § 3936(b) preempts Fla. Stat. § 45.031(5)? Thus, nullifying any confirmation of a judicial sale expressly intended to terminate protected redemptive rights in real property.

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.

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INTRODUCTION

This petition for certiorari arises due to catastrophic economic losses suffered sometimes by those sent overseas to fight for the United States, despite pre-World War II era laws passed by Congress to protect the financial interests and Civil Rights of servicemen and women. Although it is easy to forget that our Country is at war, the members of the United States Armed Forces -- both Active and Reserves components -- have prosecuted the global war on terror (GWOT) for almost two decades straight. With selflessly service to country, they also fight on behalf of many who never need to put on a military uniform. Yet still, far too often nowadays sometimes servicemembers return home homeless only because while they were serving on the frontlines overseas, someone back stateside decided to ignore long established laws and 'sold' their home. But even further insult is added to injury whenever the courts grant license to these injustices, and pays dishonorable lip-service to all who serve.

The instant case is a textbook example of this ignominious trend which is being permitted to jeopardize our national defense. And it poses important questions about enforcement of federal legislation such as the Housing and Economic Reform Act (HERA-2008)[1]; the SCRA-2003; the Bankruptcy Code; and 42 U.S.C. § 3604 related

[1]On July 30, 2008, as part of the Housing Economic Recovery Act (HERA 2008), a bipartisan Congress extended the SCRA "protected period" to prohibit foreclosure after military service to 9

to proper origination and foreclosure of *federally regulated* single-family residential mortgages[2].

Here, the proceedings below also raise vital issues concerning: (a) Constitutional Due Process and Equal Protection in bankruptcy proceedings; (b) The Bankruptcy Clause (U.S. Const. Art. I, § VIII, Cl. IV) limiting the power of state courts over bankruptcy estate property; (c) The Supremacy Clause (U.S. Const. Art. VI, Cl. II) preempting state regulations which directly contradict federal law; And, (d) Needless infringements on first amendment freedom of speech and constitutionally guaranteed access to the courts, merely to suppress damming evidence of foreclosure fraud, deceit, and trickery, aimed at improperly acquire servicemember-owned real property. This Court should grant certiorari and review this case so that in future cases like it, the lower courts may answer these important questions with greater clarity and certainty.

CITATIONS TO THE RECORD, AND JURISDICTION

"DE __" refers to docket entries in Chapter 13 case: 09 – 15332; "ECF __" cites to other documents in the record below; "Pet. App. __" refers to Appendix excerpts included herein. Title 28 U.S.C. § 1254(1) confers appellate review jurisdiction.

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months (instead of 90 days), which in this instance would expire on May 7, 2009, well after the Chapter 13 petition-date of March 26, 2009. *Id.* Pub. L. 110-289, 122 Stat. 2654.

[2] Title 42 § 3604 provides certain prohibitions against unfair and discriminatory lending practices.

STATEMENT

The U.S. 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.

But based on this case, no such guarantees apply in Palm Beach County Florida where the SCRA-bankruptcy dispute originates. Normally, violation of the basic right to "notice and an opportunity to be heard" is enough constitutional defect to render the resulting judgment or judicial act invalid. Further, alongside our sacred protections and guaranteed rights to due process is also the right to freedom of speech – free from undue official censorship; unfettered access to the courts for redress of wrongs; and the right to equal protection under the laws. *Id.* U.S. Const., 1st, 5th & 14th Amends.

Yet, the entire case here principally turns on one dispositive issue and the judicial actions taken on July 1, 2009; [DE #28; Pet. App. 3 - 1]. Actions taken under Bankruptcy Local Rules 3070-1(C) & 1017-2(B)(2) to instantly dismiss a properly filed Chapter 13 petition and payment plan -- without "notice and hearing". And after it was fully known by the court that the Petitioner-servicemember was forward deployed overseas performing military service; [Pet. App. 2 - 1 & Pet. App. 2 - 2].

Bankruptcy partial docket; Ch 13 case: 09-15332; [Pet. App. 4-1]

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	Order Granting Trustee's Request 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)

But even if this specific issue is one of first impressions for The Court, there is at least thirty-year-old authority from sufficiently similar cases in the Ninth Circuit; See *In re: Krueger* 88 B.R. 238, 241-42 (B.A.P. 9th Cir. 1988); holding that dismissing a CH 13 case without the § 1307(c) statutory "Notice and hearing" violates due process, and is void. This point alone, strongly suggests that the Court should grant certiorari to weigh-in and address the significant SCRA-bankruptcy issues directly affecting military families, and tied to our national defense.

Additionally, apart from the explicit due process abuses, lien defects, and legally untenable claims made against the servicemember's home, the *compounded* postpetition sales administered here were statutorily extinguished by operation of law according to the bankruptcy dismissal statute § 349(b)(3); and the Chapter 13

preconfirmation dismissal order on November 19, 2010; [DE #67; Pet. App. 5 - 1]. Therefore, the postpetition sale(s) at issue is / are legally precluded from nunc pro tunc *retroactive confirmation* on February 1, 2013, by the state foreclosure court -- or any court for that matter; especially nearly four years after-the-fact. It is also insightful here that this all was done intentionally in "summary proceedings" and no constitutional right to trial, nor to due process.

Based solely on the below cited docket entry [DE #67], and 11 U.S.C. § 349(b)(3), the August 31, ***2009*** sale purportedly independently confirmed by the foreclosure court on February 1, 2013, it is abundantly self-evident that the disputed postpetition sale(s) were *mandatorily* extinguished, by law and operation of § 349(b)(3); the bankruptcy dismissal statute.

Bankruptcy docket (in part); Ch 13 case: 09-15332; [Pet. App. 4 - 1]

Filing Date	#	Docket Text
11/19/2010	67	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)

In short, the lower courts in this case clearly erred principally by failing to make critical distinctions between *voidable* actions which must be successfully appealed if invalid. Versus those that are *unconstitutional*, hence void ab initio. This case, given its undisputed fact, provides prime examples of each. For instance, take the Chapter 13 dismissals orders issued on July 1, 2009, and on November 19, 2010 --

during fully known protected periods of military service. The erroneous decisions below, each inexplicably fail to acknowledge established principles recognizing the inherent *legal nullity* or *voidness* of judicial acts based on defective due process, and clear jurisdictional abuses producing invalid results. The critically flawed reasoning offered by the courts below depart drastically from well-known law, and appears to nullify entire sections of the SCRA and Bankruptcy Code. Finally, the decision of the Circuit Court of Appeals in this extraordinary SCRA-bankruptcy case stemming from Florida's *summary* foreclosure proceedings, provides an insufficient basis and rationale to entirely disregard constitutional due process guarantees, and specific provisions of federal law including the SCRA §§ 3936(b), 3953(c), as well as the de novo operation of § 349(b)(3), the dismissal statute.

The clearly erroneous decisions here also sit surprisingly at ease with repeated willful deprivation of protected § 541(a) bankruptcy estate property, absent Due Process of law. The bazar rulings are also eerily quiet on many serious constitutional issues. Interestingly, not one of the courts below in this SCRA-bankruptcy dispute can offer a single legitimate reason or rationale *why* the SCRA and other pertinent federal protections, *do not apply*. Those decisions therefore obviate any basic duties to the U.S. Constitution, especially by ignoring the district court's *exclusive* core responsibilities, under title 28 U.S. Code §§ 1334 and 157. Additionally, the flawed rulings below needlessly violate ordinary comity with Florida statutes and federal

law, particularly the SCRA §§ 3936(b) & 3953(c); §§ 349(b)(3) & 362 of title 11; and Fla. Stat. §§ 45.0315, 45.0316, & 673.309. And there is absolutely no need for the courts below, especially the bankruptcy court, to capsize all basic provisions of applicable federal law, nor to whimsically create an entirely new construction and line of reasoning which departs so starkly from long established jurisprudence.

OPINIONS BELOW AND CASE CHRONOLOGY

This appeal is taken from the bankruptcy court's (interlocutory) orders [Pet. App. 1-3, to 1-1] which, amongst its many other flaws, appears to needlessly violate first amendment freedom of speech protections, and constitutionally guaranteed unfettered access to the courts. And especially since it chiefly serves to suppress potentially embarrassing evidence of foreclosure fraud [3] and other serious misconduct in the underlying case; [Pet. App. 1-3].

On July 1, 2009, very soon after petitioner was known to be deployed overseas, a *constitutionally defective*, and hence invalid, order DE #28 [Pet. App. 3-1; Pet. App. 2-2] was wrongly entered, allegedly, under bankruptcy local rules (3070-1(C) & 1017-2(B)(2)). Purporting to instantly dismiss a properly filed Chapter 13 petition and proposed repayment plan. The order is unlawful, mainly because it was issued to evade the Code and without the § 1307(c) "notice and hearing" which is

[3] Alleged creditor, EMIGRANT, is a predatory lender based in New York City, but known for decades to illegally target minority home-owners with Reverse Redlining, equity striping (STAR/NINA) mortgage foreclosure schemes very similar to its conduct here. See the numerous public reports online, and pending case: 11-cv-02122 (E.D.N.Y).

prerequisite and not discretionally -- prior to the court acquiring authority to enter a dismissal order. The instant dismissal, if effective, would arguably essentially covertly dissolve the § 362(a) automatic stay solely to help evade and defeat particularly burdensome onerous Bankruptcy Code Rule 3001 proofs of claim provisions. In sum, the unconstitutional "immediate dismissal" order was ultimately intended to improperly aid EMIGRANT -- a known false creditor[4] -- to recover from its initial intentional stay violations on Monday, March 30, 2009, four days after the Chapter 13 petition was filed on March 26, 2009. This hard-fought bankruptcy-SCRA case has, as evidentiary support, a great volume of official records and other docket entries below; including transcripts of proceedings showing that:

- On Thursday, March 26, 2009, in effort to secure basic due process guarantees including a payment history, and ordinary discovery, among other things, the Petitioner-servicemember in this case had to file for bankruptcy in the pending summary judgment foreclosure proceedings; [DE #01- 09; App. 4-2 to App. 4-1].
- Yet, undeterred and without seeking proper relief from the automatic stay, the Appellee EMIGRANT -- a known false creditor who is unable to file a legitimate Rule 3001 bankruptcy claim, willfully continued its reckless misconduct and refused to halt its unlawful collection actions. Consequently, it illegally sold protected Chapter 13 estate property TWICE: on March 30, 2019; and once again on August

31, 2009. Its postpetition collection activities, including the disputed sales, are willfully unlawful since they were NOT approved by the bankruptcy court, and because it also repeatedly refused to rescind them; [Pet. App. 4-2 to Pet. App. 4-3].

- On February 1, 2013, nearly four years later, and again without seeking the bankruptcy court's *exclusive* preconsent, the state foreclosure court acting solely at EMIGRANT'S request, ostensibly ***"confirmed"*** one of its illegal postpetition bankruptcy sales from August 31, 2009, by simply entering a facially bogus legally invalid *Certificate of Title* onto the local land records; [DE #67; Pet. App. 5-1].
- On December 21, 2015, the bankruptcy court rightly eventually reopened its Chapter 13 case and preauthorized an adversary proceeding against EMIGRANT for its repeated violations of federal bankruptcy law; [DE #94]. Thereafter, a timely sufficient Adversary Complaint was filed, as allowed [ECF 01].
- However, after just a preliminary hearing, before any meaningful discovery or *trial* could take place -- on March 31, 2016, the bankruptcy court (that arguably had precipitated the whole legal fiasco to start with by issuing the clearly unconstitutional *instant dismissal* on July 1, 2009) suddenly took another inexplicable unconstitutional departure.
- On April 13, 20016, the bankruptcy court issued another set of clearly erroneous orders, ECF 47, designed to abruptly and permanently dismiss the Adversary

Proceedings that were preapprove and properly filed. And imposed abusive sanctions in excess of $15,000 – supposedly, for filing a *pre-authorized* complaint.

- Apart from plainly flawed reasoning about why, in its view, the unlawful **second** unapproved postpetition sale on August 31, 2009, did not violate an automatic stay because its (unconstitutional) dismissal order on July 1, 2009, supposedly took immediate effect, the decision offered zero plausibly or credible supports for the court's sudden U-turn and abrupt dismissal. Accordingly, the clearly flawed decision of the bankruptcy court was promptly appealed, on May 2, 2016; [ECF 57].
- Then, to discourage the pending appeal the state foreclosure court – again entirely at EMIGRANT'S request -- issued statutory time-barred bogus deficiency judgments for $749,518.64; and Civil Contempt charges, while threatening incarceration.
- On October 4, 2016, Petitioner thus rightly asked the bankruptcy court to consider relief under § 362, sufficient to adequate protect bankruptcy jurisdiction and appeal. But after sensing unfair bias, and its covert support for EMIGRANT'S illegal collection actions and abusive tactics, the otherwise entirely proper request for a protective order was unilaterally withdrawn; [ECF 129, 138].
- Despite immediate withdrawal of a properly filed, legally permissible, request to impose § 362 stay protections, on December 6, 2016, to further suppress the evidence of foreclosure fraud, the bankruptcy court then ordered roughly $4,000 in added punitive sanctions – supposedly for simply requesting § 362 stay relief in a

Chapter 13 case. It also even included additional unconstitutional censorship requirements, just to improperly censor exactly what papers one party ONLY could file, without its preapproval; [ECF 142, 143].

- The order was appealed to the district court on December 13, 2016, for unduly restricting court access, and needless unfairly infringement and censorship of first amendment freedom of speech, for ONLY certain parties. [Pet. App. 1-3].
- On August 11, 2017, despite needlessly delaying the underlying bankruptcy appeal without justification, the district court issued a seven-day show cause order, pending dismissal of the interlocutory appeal. Subsequently, the initial brief was timely filed on August 21, 2017; [ECF 13].
- On August 24, 2017, while delaying ruling on the core bankruptcy appeal for nearly two years, the district court issued another facially farse seven-day order intended to quash the appeal, even after it was timely briefed; [ECF 14].
- On January 25, 2018 -- over two years after the main bankruptcy appeal, and about six months after the interlocutory appeal brief was filed -- the district court, disregarding all filling requirements for Appellee-EMIGRANT, abruptly dismissed the matter supposedly for "failure to prosecute". Its actions were clearly meant to improperly moot the appeal, and to circumvent an answer brief; [ECF 15; App.1-2].
- On February 2, 2018, the order was appealed to the 11th Circuit Court of Appeals [ECF 17], which affirmed on April 15, 2019, [Pet. App.1] triggering this petition for

a writ of certiorari. The appeal is timely after tolling applicable military service, and extension. Petitioner thus seeks review of the bankruptcy court's unconstitutional actions throughout this significant SCRA-bankruptcy dispute.

BACKGROUND AND HISTORY OF THE SCRA

In exercising its power to raise and support armies, and to declare war, Congress has long recognized the need for protective legislation for servicemembers whose service to the nation compromises their ability to meet certain financial obligations, and protect their legal interests. On December 19, 2003, the Servicemembers Civil Relief Act (SCRA-2003) was enacted *". . . 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. (Emphasis added). It accomplishes this by temporarily suspending civil proceedings and other transactions that may adversely affect the rights of servicemembers during their military service, and shortly thereafter. Congress revamped and updated the law after renewed military operations in the Middle East, and in response to increased deployment of Reservists and National Guard personnel. The SCRA-2003, as amended, is essentially a restatement and modernization of the protections previously available under a predecessor law, the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA-1940).

The SCRA does not provide forgiveness of all debts, or a universal extinguishment of contractual obligations of servicemembers. Nor does it grant absolute immunity from civil lawsuits. Instead, the SCRA provides for, among other things, interest reduction to a six percent ceiling on *preservice* debts; protection from *default judgments*[5]; and temporary suspension of certain civil claims such as foreclosures and evictions against military servicemembers. In this way, it seeks to spread the burden of military service to a broader portion of the citizenry, and to balance the interests of both servicemembers and creditors[6].

The SCRA protections apply everywhere in the United States, including the District of Columbia and in any territory "subject to the jurisdiction of" the United States. It applies to any civil judicial or administrative proceeding in any court or agency in any jurisdiction subject to the Act; but not in criminal proceedings. Its protections begin for most servicemembers on the date they enter Active Duty military service. See 50 U.S.C. § 3911(3); 10 U.S.C. § 101(d)(1). However, for *Reservists* such as the Petitioner in this case its protections begin upon the member's ***receipt*** of title 10 military orders. *Id.* at § 3917(a). Although some protections are contingent on whether military service "*materially affects*" the servicemember's

[5] The definition of the term "judgment" was added by Title VII of the Veterans Benefits Improvement Act of 2004, titled "Improvements to Servicemembers Civil Relief Act"; Pub. L. No. 108-454, 118 Stat. 3598 (2004).
[6] EMIGRANT is called a "creditor" here, yet it is unable to show that it ever actually held a valid claim. Indeed, it proves that it cannot be a legitimate mortgagee, based on unreconcilable discrepancies in the note, and mortgage documents.

ability to meet the obligation, other provisions are not -- such as the determinative § 3936(b) tolling provisions, which are independently controlling here. Its protections are to be construed liberally in favor of the servicemembers the law protects. But if the court finds in exceptional instances that military service is of no "material effect" it has discretion to deny certain relief. In this case however, no such findings were ever made, hence that requirement is inapplicable to the undisputed facts here.

Prior to October 2010, the Act did not contain an explicit private right of action; see also re Hurley v Deutsche Bank, et al., No. 08-cv-361, 2009 WL 701006 (W.D. Mich.). Consequently, private suites brought for violations often gave rise to the question whether Congress intended to provide servicemembers a right to sue under the statute. The answers to this question caused disagreement amongst different district courts, prompting Congress to amend the SCRA to clarify that it indeed provides a private right of action against violators. The United State Attorney General (AG) and the Department of Justice (DoJ) is authorized to enforce the SCRA (§ 4041). However, that agency admits it is unable to keep pace with the high volume of SCRA violations reported. Therefore, private suites by servicemembers themselves are an essential part of enforcement, and without effective enforcement of the SCRA the United State cannot meet its military and national defense commitments.

The Act, 50 U.S.C. § 3953(d), also includes provisions which make it a federal criminal offense punishable under Title 18 U.S. Code by a fine and /or imprisonment for up to a year for any person who knowingly aids in the eviction or seizure of servicemember-owned property in violation of the protected rights spelled-out in the statute. Its six percent mandatory interest rate cap on preservice debts, including auto loans and residential mortgages, unless a creditor demonstrates that military service has no "material affect" on the obligation, is one of the key provisions and safe-guards of the SCRA. It is also supposed to be prohibited and illegal for creditors to simply foreclose, accelerate the payment of principal, or otherwise retaliate against any servicemember for requesting SCRA[7] relief. Yet, that is precisely the scenario represented by this case. Thus, making this SCRA-bankruptcy dispute an ideal test case and excellent vehicle for certiorari review.

REASONS FOR GRANTING THE WRIT

One of the strongest arguments for granting this petition comes straight from the words of the bankruptcy court itself, taken straight from the record. They provide a clear picture of the ambiguity in the court's construction of the statute:

> 10 THE COURT: And I have a funny feeling,
> 11 having read all of the case law in this area, that I
> 12 don't think I have much discretion in granting the
> 13 stay. Some judges feel that there's more discretion,
> 14 but I do not think so.

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

Especially since none of the decisions below have done so, this Court should clarify if the modern-day SCRA provisions in fact requires entry of a statutory or judicial stay if one is requested. Also, the Court should clarify whether *instantaneous* and *immediate* dismissal without prerequisite 1307(c) "notice and opportunity for hearing", of a properly filed Chapter 13 bankruptcy petition and proposed repayment plan, is unconstitutionally. Even if Bankruptcy Local Rules somehow allow for instant dismissal when the debtor is deployed performing military service. Furthermore, the Court should use this SCRA-bankruptcy CH 13 related case to clarify whether a valid enforceable residential mortgage lien can precede and predate by *six days* execution of an underlying predicate Promissory Note debt instrument.

I. "Material effect" of Military Service

In considering the protections Congress provides to military servicemembers, for the first time on June 7, 1943, nearly seventy-seven years ago, the U.S. Supreme Court stated:

> "The . . .Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation. The discretion that is vested in trial courts to that end is not to be withheld on nice calculations as to whether prejudice may result from absence, or absence result from the service. Absence when one's rights or liabilities are being adjudged is usually prima facie prejudicial. But in some few cases absence may be a policy, instead of the result of military service, and discretion is vested in the courts to see that the immunities of the Act are not put to such unworthy use." *Boone v. Lightner, 698, (1943).*

Even after several wars, and major renovations to the Act, today it still provides for both judicial and mandatory relief. That alone shows Congress' deliberate intent to avoid creating inflexibility and rigidity. Yet, it is that same flexibility which

seems to cause the most criticism of the Act as being too vague and ambiguous. For example, it does not clearly specify whose burden it is -- the servicemembers' or the creditor's -- to show "material effect" where the court has discretion to deny relief. This Court noted that ... *"Absence when one's rights or liabilities are being adjudged is usually prima facie prejudicial." Id.* It should therefore use this case to clarify how the burden of proof might shift, for showing why military service could warrant removing protections triggered by entering military service.

Indeed, that very question was a pivotal point before the Court in 1943 in *Boone*. For that foundational case, during World War II, a North Carolina trial court denied stay relief to Captain Boone, an Army supply officer, whose civilian occupation was as an attorney. There, the soldier was being sued by his ex-spouse alleging that, as trustee, he had mismanaged and depleted their daughter's education trust fund. The case was prosecuted back in North Carolina, largely in his absence, while he was stationed in Washington D.C.

Similar to this present SCRA-bankruptcy case, *Boone* also sought a temporary postponement of the proceedings based on his military service -- albeit by filling affidavits and depositions, administered in New York. His sworn statements explained that after the national declaration of war on December 8, 1941, the day after the Pearl Harbor attack, work in his division was such that no military leave could be obtained, except for "serious emergencies". The trial Judge, claiming that

he too had served in the U.S. Military, felt that *Boone's* absence was a delay tactic and "litigation strategy", and denied him any stay relief under the Act. The case resulted in a money judgement in excess of $11,000 against *Boone*, which was affirmed by the North Carolina Supreme Court, and ultimately upheld in this Court. However, the dissenting opinion from Justice Black's is still remarkably on point:

> "...The petitioner is a soldier... He duly claimed the protection of the Soldiers' and Sailors' Civil Relief Act of 1940...and rest upon it. I think he should prevail. The relevant statutory provision before us may be summarized as follows: Actions brought against a person in military service shall be stayed upon application of that person "unless, in the opinion of the court, the ability of the ...defendant to conduct his defense is not materially affected by reason of his military service."...I believe that the clause under consideration requires that an action against a person in the military service must be [319 U.S. 561, 577] stayed unless the trial judge concludes (a) that no personal judgment will result and that the action will in effect preserve the interests of all the parties for the duration of the war; or (b) that the defendant is only a formal party; or (c) that the defendant need not be present for any purpose, either before, during, or after the trial, and that he will be adequately represented and has no need to testify or participate in any way, or (d) that the defendant's military service does not preclude him from having ample opportunity to get ready for, and to take his necessary part in the litigation. In my opinion, none of these conditions are met here.... The purpose of the Act is to prevent soldiers and sailors from being harassed by civil litigation "in order to enable such persons to devote their entire energy to the defense needs of the nation." § 100. He is required to devote himself to serious business, and should not be asked either to attempt to convince his superior officers of the importance of his private affairs or to spend his time hunting for lawyers.
>
> The trial court should, at the very least, have inquired of the appropriate military authorities whether the petitioner could be granted ample leave to prepare his defense and be present for trial. If the Act does not require this, it serves little purpose....In the course of the war, many actions will be brought against soldiers who have never heard of this Act and have no notion that this Court might want them to apply to [319 U.S. 361, 379] their superior officers for leave and to make and file a formal record of their superior officers' refusal. I fear today's decision seriously limits the benefits Congress intended to provide in the Soldiers' and Sailors' Civil Relief Act. It apparently gives the Act a liberal construction for the benefit of creditors rather than the benefit of soldiers. It places in trial Judges enormous discretion to determine from a distance whether a person in military service has exercised proper diligence to secure a leave, or whether it is best for the national defense that he make no application at all. These are questions of which the judiciary has no competence, since only the military authorities can know the answers."
>
> *Boone v. Lightner, 698, (1943).*

Even today, the important observations noted in 1943 are valid, that. . . "*The trial court should, at the very least, have inquired of the appropriate military authorities whether the petitioner could be granted ample leave to prepare his defense and be present for trial. If the Act does not require this, it serves little purpose. . .*". In the present SCRA-bankruptcy case, it is obvious from the words of the court itself that there is still much uncertainty about whether or not congress intended for either a judicial or mandatory stay, even after "*material effect*" is shown by someone deployed abroad, and who is in strict statutory compliance. Indeed, the court itself has said as much:

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

See August 27, 2009 *hearing transcript for Motion to Vacate [instantaneous] Dismissal*[8] *[ECF # 30]; Page 5.*

[8] The instantaneous dismissal order cited as authority, Bankruptcy Local Rules 3070-1(C) and 1017-2(B)(2).

It is also probably worth noting again that the bankruptcy court here was essentially vacating its earlier *unconstitutional* instant dismissal order issued without sufficient due process; [DE #28; Pet. App. 3-1]. The order was eventually docketed on September 1, 2009, about a week later than the "couple of days" time-frame stated. The last paragraph also shows the uncertainty about whether federal law mandates a statutory or judicial postponement. The order VACATING the July 1, supposed instant dismissal; [DE #33], in part provided as follows:

> "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 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.
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Although the *"instantaneous dismissal" order* at issue in this case [DE #33] supposedly was *vacated*[9] 60 days afterwards, the decisive question is whether an order intended to instantly dismiss a case without prerequisite "notice and hearing", actually ever lifted the automatic stay. See *In re: Krueger* 88 B.R. 238, 241-42 (B.A.P. 9th Cir. 1988); holding that a dismissal absent § 1307(c) statutory "Notice and hearing" violates *due process*; and is void. Since the order purportedly

[9] The Bankruptcy Court eventually VACATED its dismissal order on the day AFTER an unapproved postpetition sale occurred on August 31, 2009 -- albeit without cancellation of the previous postpetition sale from March 30, 2009, and without any legitimate bona fide security interest claim, nor legal standing to sell the SCRA-protected homestead property at issue.

vacating the unconstitutional instantaneous dismissal also was not docketed until the day *after* the unapproved foreclosure auction had occurred on August 31, 2009, the effect and constitutionality of instant dismissal of a bankruptcy case without notice and hearing also is outcome determinative, and of vital importance.

II. The Preemptive effect of the SCRA § 3936(b); tolling of judicial foreclosure in Florida

Five years after deciding *Boone* the Court had opportunity to interpret the tolling provisions of the SSCRA-1940 in re *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948). Citing *Boone,* it reversed the Florida Supreme Court in a dispute involving vacant land sold for delinquent taxes during the owner's military service. Apparently, until now the Court has not had the opportunity to interpret tolling provisions of the modern-day statute, since the law was overhauled in 2003. This case, and a study of other SCRA-related disputes since 2003, show that the lower courts regularly err by follow neither the spirit nor letter of this Court's decisions requiring that the Act be read in favor of those it was designed to protect.

The SCRA-2003 tolling provisions are found in Article II under General Relief, § 3936. That section deals with compulsory (not optional) requirements which *must* be observed *before* terminating redemption rights to real property during a period of military service, such as this case involves. The Act, in substance, provided 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, . . . ". Usually, the effect of this section 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 v. Bigby*, 228 Ark. 40, 42 (Ark. 1957). However, Florida judicial foreclosure law, § 45.031(5), expressly prescribes a zero period of redemption ***after a foreclosure sale occurs***. This requirement clashes squarely with what federal law mandates whenever servicemember-owned real property is foreclosed on during a period of active duty. Therefore, due to the specific novelty of Florida foreclosure law, the net effect of the SCRA's tolling provision § 3936(b) presents a decisive dispositive outcome-determinative question, in this instance.

It is a commonly known irrefutable fact, that under Florida foreclosure law[10] since mid-1994, the main purpose of the clerk promptly certifying a foreclosure sale is to *terminate rights 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. This particular legislative device is intentionally designed to provide greater certainty to winning bidders or prospective owners at completion of judicial foreclosure auctions, and greater assurance against other parties

[10] In mid-1994, the Florida legislature amended Fla. Stat. §45.0315 to expressly provide for termination of Redemption Rights the moment when the Certificate of Sale is filed in Florida foreclosure proceedings. 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.

frustrating, by cancellation, the results of a fair judicial sale. By ministerial termination of the right to redeem immediately upon certification of the regularity of a foreclosure sale by the county clerk, the sale result is more conclusive. In other words, once the county clerk certifies the auction was properly advertised and conducted as a regular fair auction, the right to redeem is terminated pursuant to title VI, Fla. Stat. § 45.0315. Florida law expressly provides:

> **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.
> Fla. sta. Chapter 45.031(5)

Furthermore, pursuant to Florida law, F.S. § 45.031(6): "*When the certificate of title is filed the sale shall stand confirmed, and title to the property shall pass to the purchaser named in the certificate without the necessity of any further proceedings or instruments.*".

Moreover, Florida's statewide Final Judgment of Foreclosure (Form 1.996) states:

> On filing the certificate of ~~title~~ sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property and the purchaser at the sale, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant remains in possession of the property, the clerk shall without further order

of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.
(Prior to 2010, formerly subsection 6, now 7).

Therefore, in Florida the filing of a *certificate of sale* immediately terminates redemptive rights. However, the SCRA § 3936(b), which is a federal statute, contains tolling provisions that directly conflict with Florida foreclosure law unless the judgement specifies otherwise and properly computes for applicable period(s) of military service. So, unless the final judgment of foreclosure specifically makes adjustments to Florida's zero-days post-sale right of redemption, this contradiction effectively creates a federal prohibition against the state's foreclosure sale.

SCRA § 3936. 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.

The Supremacy Clause of the U.S. Constitution dictates that normally, where there is a regulatory clash, such as this instance, federal law **must** preempt state law; not vice versa. Because there is a direct conflict in this particular case between Florida statute § 45.0315 and the mandatory tolling requirements of the SCRA, among other things, the end result is that . . . *there can be no lawful judicial sale of servicemember-owner real property in Florida during a period of military service not properly accounted for in the judgment, order, or decree of foreclosure.*

In this particular SCRA-bankruptcy case it is an indisputable fact that the state judicial sale in question occurred during the owner's known deployment overseas, on August 31, 2009. Therefore, unless the sale concerns proceedings governed by the IRS Code, as plainly stated in subsection 3936(c), the self-executing statutory tolling provisions of § 3936(b) operate during applicable periods of military service to impose ex post facto federal prohibitions against the county clerks[11] in Palm Beach County, and throughout Florida, from issuing a "*Certificate of Sale*" under title VI, Fla. Stat. Chapter 45.031. Also see debtor's redemptive rights; 11 U.S.C. § 1322(b).

Accordingly, it is obvious that in this case the foreclosure clerk simply filed an unlawful federally barred certificate of sale. Thereby flouting or wantonly violating long-established fully known Congressional prohibitions against precisely actions to terminate legally protected SCRA redemptive property rights during military service. Due therefore to the federally mandated tolling provisions the foreclosure sale held in this case on August 31, 2009, is prohibited. Thus, it was legally preempted from occurring on account of the owner's well-documented military service abroad.

It necessarily follows then that under Florida's relevant foreclosure mechanism, and the holding in re *Le Maistre v. Leffers*, that the servicemember-owned real

[11] No one can seriously argue that the county clerk in this instance did not simply disregard the mandatory tolling provisions of 50 U.S.C. § 3936(b), by filing a second **compounded** Certificate of Sale on August 31, 2009, even though the owner was known to be serving on active duty overseas.

property concerned here, simply could not be subject to a state judicial sale during the owner's known and documented military service abroad on August 31, 2009, without violating title VI, Fla. Stat. § 45.0315, SCRA § 3936(b), and basic constitutional due process. And the order purporting to confirm a void act specifically barred by title 50 U.S.C. § 3936(b), Pub. L. 108-189 (Oct. 17, 1940), is arbitrary, constitutionally flawed, and entirely unfounded.

III. Limits on § 105 grant of authority; the court may not usurp Congress' role nor ignore federal law

Section 1334(a) of title 28 of the United States Code expressly gives *bankruptcy courts* "original and exclusive jurisdiction of all cases under title 11.". Bankruptcy courts 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 a state foreclosure court with jurisdiction over a core bankruptcy proceeding, including 'motions to terminate, annul, or modify the automatic stay"; *Gruntz v. Cnty. of Los Angeles (In re Gruntz),* 202 F.3d 1074, 1083 (9th Cir. 2000); *Id.* 11 U.S.C. § 362(d) & (k).

As specialize branches of the federal courts, Bankruptcy Courts are specifically endowed by Congress with immense powers to enforce bankruptcy law. United States Code, title 11, § 105(a) expressly vests bankruptcy judges with broad discretion to "*issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title*". That grant of specific authority, however,

does not include power to oust Congress itself; nor to arbitrarily and capriciously rewrite the law. Conversely, it also is true that Congress never intended nor authorized bankruptcy judges to issue orders that have absolutely nothing to do with carrying out the bankruptcy Code, and ignore constitutional guarantees under the guise of enforcing bankruptcy law.

The bankruptcy Code itself repeatedly states that the court may act *only* "after notice and a hearing". The "hearing" requirement actually means "opportunity for a hearing", because 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.

This instant case represents a perfect text-book example of such abuse of bankruptcy authority, including the *immediate dismissal* action issued on July 1, 2009. That wrongful action, by itself, precipitated so much unnecessary debate below about whether a § 362 stay remained intact, or had lifted on August 31,

2009. Although the owner's military deployment during that exact time period is unmistakable, among other things. And even though it represents a compounded[12] unapproved postpetition sale, because the previous sale on March 30, 2009, was never properly cancelled. Additionally, the wrongful order issued on July 1, 2009, under Bankruptcy Local Rules 3070-1(C) and 1017-2(B)(2), supposedly immediately dismissing the Chapter 13 petition and proposed payment plan is void ab initio, as a violation of due process. See 11 U.S.C. § 1307(c); *In re: Krueger* 88 B.R. 238, 241-42 (B.A.P. 9th Cir. 1988).

In this instance however, not only is there no *proper notice* nor *opportunity* to be heard afforded prior to immediately dismissing the case -- as merely a round-about means of lifting the automatic stay in order to help evade section 362(d) and rule 3001 requirements. It is difficult to imagine the urgent necessity to *instantly* dismiss a pending Chapter 13 petition and *proposed payment plan* -- without any notice whatsoever to someone actively serving in the frontlines, except malfeasance. Besides, this is precisely why the SCRA exists; to protect the rights of those serving in the armed forces, and to prevent things like a foreclosure and other civil matters back home from becoming a personal or family crisis, and potentially deadly distraction from the battle field military mission.

[12] The second unapproved postpetition sale on August 31, 2009, was intentionally compounded on top of a prior sale also violating the automatic stay on March 30, 2009, by the state foreclosure court that was also never properly rescinded nor set aside to begin to allow yet another sale to take place -- even if sufficient standing or authority to sell the home could be proven, which it clearly cannot.

Since Congress has decided it is unfair and distracting for persons performing military service to the United States, to at the same time have to defend themselves in nonessential civil litigation. The courts therefore cannot disagree with Congress on this point by requiring servicemembers to simultaneously defend the Country, while also having to defend themselves in routine civil proceedings ordinarily subject to postponement.

IV. Unconstitutional actions that violate due process are legally invalid, and innately void

Given the indisputable facts of this SCRA-bankruptcy case, even if it could be seriously argued that the improper instantaneous dismissal order [DE #28; Pet. App. 3-1] wrongly issued on July 1, 2009, is valid, does not violate due process, and somehow dissolved the bankruptcy § 362(a) stay and the SCRA § 3936(b) tolling prohibitions. And even if it is not the bankruptcy court's own deliberateness in untimely docketing a corrective order [DE #33; Pet. App. 4-3-3] one day AFTER the sale, but almost a week after promising to do so in "*a couple of days*". And, even if a valid perfected mortgage lien existed against the SCRA-protected home and it could be produced – all of these suppositions still cannot negate the mandatory SCRA-HERA protections in effect *solely* based on Petitioner's fully documented military service on Monday, August 31, 2009, 1:18 p.m. EDT; the exact same date as the second (compounded) postpetition sale. Besides, the mandatory statutory "prepetition ante" status quo requirements of 349(b)(3), and

the dismissal order [DE #67; Pet. App. 5-1] clearly extinguishes claims related to any postpetition sale that occurred prior to the subsequent dismissal, November 19, 2010.

Regardless, it is equally impossible to defend the fatal irreconcilable discrepancies in a uniform residential security instrument that predates execution of the predicate note by at least six days, as it is for the lower courts in this case to properly explain why the SCRA does not apply, and why the adverse actions against SCRA protected servicemember-owned real property are not invalid. The fifth amendment to the U. S. Constitution also protects us from official actions that violate the right to due process for the taking of life, liberty, or *property*. That constitutional guarantee operates naturally, by law, to invalidate unconstitutional judicial acts against persons in the United States -- including members of the military -- from unlawful acts which violate due process in *summary* proceeding designed to avoid scrutiny of a trial.

For a lawsuit to proceed it relies on standing, which is a relevant question at every stage, even on appeal. But in this case, the insufficient standing issue is not just a conceded fact, but it was indeed plead as an affirmative foreclosure claim by rightly asserting that the underlying mortgage was executed on June 23, 2005, or at least six days before a predicate promissory note existed. Since 1872 however, established legal principles and American jurisprudence has held that *". . . a*

mortgage that purports to secure repayment of a debt has no validity . . . if the debt has no existence." See *Carpenter v. Logan*, 83 U.S. 271 (1872). The bizarre inexplicable fact in this significant SCRA case that the purported mortgage instrument in fact predates the predicate note by at least a week, is by itself, conclusive evidence that the entire foreclosure claim is bogus, and legally untenable from inception.

Even though the U.S. Supreme Court in *Carpenter* discussed the consequences of an *assignment* of mortgage without an assignment of the underlying debt, it also observed that . . . *"the note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity."* So, for almost a century and a half in the United States courts have held that a mortgage, apart from a valid note is a legal nullity, or nugatory; *Id.* That foundational fact is profound onto itself, since it essentially guarantees that the foreclosure claims here are bogus and could never be true. In other words, the postpetition sales are invalid also because they lack legitimate authority to sell, or foreclosure, based on the underlying invalid security instrument.

So even if it could be argued that the foundational issue of standing is not properly before the bankruptcy court, the lack of standing would still render the postpetition, self-help, unilateral, unapproved sale of Chapter 13 estate property void. Although

surely properly before the bankruptcy court is whether its exclusive jurisdiction and automatic stay was violated by the multiple postpetition sales. The fact that the sale on March 30, 2009, also violates the stay is unquestionable, especially since it was never properly rescinded nor cancelled, and remains relevant; 11 U.S.C. § 362(k).

The U.S. Supreme Court, in 1940, considered a sufficiently similar dispute involving willful violation of bankruptcy jurisdiction. That landmark case, *in re Kalb v. Feuerstein* involves two Wisconsin farmers, and it established the rule of voidness for actions taken in violation of the automatic stay. In 1933, the owners of a family farm (the Kalbs) were brought into state court on a mortgage foreclosure. By 1935, when the property was sold to the mortgagees at a foreclosure sale, the *Kalbs* had filed a bankruptcy case (under the Frazier-Lemke Act). In 1936, the *Kalbs* were evicted. They did not appeal any of the judgments that led to this result. But thereafter, they brought two actions in the Wisconsin state court system collaterally attacking their eviction: first, against the mortgagees, for restoration of possession; second, for damages against the mortgagees and the state officials who confirmed the foreclosure sale. Both cases were dismissed by the trial court and the dismissal was affirmed by the Wisconsin Supreme Court. On further appeal to the U.S. Supreme Court, there were two issues to be determined: "[1] whether the Wisconsin . . . Court had jurisdiction, while the bankruptcy petition was pending in the bankruptcy court, to confirm the sheriff's sale and order appellants dispossessed,

and, [2] if it did not, whether its action in the absence of direct appeal is subject to collateral attack." 308 U.S. at 436, 60 S. Ct. at 345.

The Court answered the first question by reviewing the automatic stay provisions of the Act, and concluded that these provisions "demonstrate[d] that Congress intended to, and did deprive the [State] Court of the power and jurisdiction to continue or maintain in any manner the foreclosure proceedings against appellants without the consent of the bankruptcy court in which the farmer's petition was then pending." 308 U.S. at 438, 60 S. Ct. at 346. On the second question -- whether there could be a collateral attack on the order of a state court that lacked jurisdiction because of the automatic stay -- the Court expressly found an exception to the general rule; writing in part:

> ". . .We think the language and broad policy of the . . . Act conclusively demonstrate that Congress intended to, and did deprive the... County Court of power and jurisdiction to continue or maintain in any manner the foreclosure proceedings ...without the consent after hearing of the bankruptcy court in which the...petition was then pending."
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> Foot Note 12. That a state court before which a proceeding is competently initiated may – by operation of supreme federal law – lose jurisdiction to proceed to judgement unassailable on collateral attack is not a concept unknown to our federal system. See *Moore* v. *Dempsey*, 261 U.S. 86. Cf. *Johnson* v. *Zerbst*, 304 U.S. 458.

Id. Kalb v. Feuerstein, 308 U.S. 433, 60 S. Ct. 343 (1940).

Accordingly, the Court remanded the *Kalbs*' cases to the Wisconsin courts with directions to determine appropriate remedies against the parties who had acted in violation of the automatic stay, despite the state court judgment authorizing their actions. 308 U.S. at 443, 60 S. Ct. at 347. The Supreme Court also held that the

extent to which the state court had considered or ruled on the question of its jurisdiction was irrelevant. 308 U.S. at 438-39, 60 S. Ct. at 346.

This hard-fought SCRA-bankruptcy-foreclosure case has sufficiently similar facts to *Kalb* concerning the nonbankruptcy sale of exclusive bankruptcy estate property, among other serious infirmities. It also is an ideal vehicle for this Court to provide badly needed clarification, or a more precise interpretation, of federal provisions affecting the real property and due process rights of venerable military families.

Lastly, granting a writ for certiorari review in this case could help strengthen or clarify laws directly tied to the common defense of the United States. It further provides a perfect opportunity to review [mis]construction of whole sections of federal law and constitutionally flawed proceedings sometimes permitted against Chapter 13 debtors, thus potentially impacting untold numbers of bankruptcy cases.

CONCLUSION

The Court should grant certiorari in this case.

Respectfully Submitted,

Dated March 21, 2020.

Joseph L. Worrell, pro se.