

NO.

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IN THE  
**Supreme Court of the United States**

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Donald Henderson Scott; Carolyn Yvonne Scott;  
Petitioners

v.

U.S. Bank National Association as Trustee, for  
Bayview Financial Mortgage Pass-Through  
Certificates, Series 2005; M&T Bank; Bayview Loan  
Servicing LLC; David L. Bowen Southlaw, P.C.; Rob  
Clifton; Anderson Law, LLC; Mortgage Electronic  
Registration Systems, Inc.; Mila Homes, LLC;  
Corinthian Mortgage Corporation; Security Land  
Title Company;  
Respondents

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## Question Presented for Review

The Petitioners have been denied their right to a jury trial in federal court.

- I. Whether the United States Court of Appeal for the Eighth Circuit misapprehended its jurisdiction in a way that conflicts with decisions of the U.S. Supreme Court?

## Lists of Parties to Proceeding

### **Petitioners:**

Donald Henderson Scott;  
Carolyn Yvonne Scott

### **Respondents:**

U.S. Bank National Association as Trustee, for  
Bayview Financial Mortgage Pass-Through  
Certificates, Series 2005;  
M&T Bank;  
Bayview Loan Servicing LLC;  
David L. Bowan Southlaw, P.C.;  
Rob Clifton;  
Anderson Law, LLC;  
Mortgage Electronic Registration Systems, Inc.;  
Mila Homes, LLC;  
Corinthian Mortgage Corporation;  
Security Land Title Company;

### List of All Proceedings in Other Courts

Donald Henderson Scott and Carolyn Yvonne Scott  
v. U.S. Bank National Association as Trustee, for  
Bayview Financial Mortgage Pass-Through  
Certificates, Series 2005, et al., No: 19-2113, United  
States Court of Appeals for The Eighth Circuit.  
Judgment entered 08/07/2019.

Donald Henderson Scott and Carolyn Yvonne Scott,  
v. U.S. Bank National Association Trustee for  
Bayview Financial Mortgage Pass-Through  
Certificates, Series 2005, et al.; No. 4:19-cv-00308-

DGK; United States District Court for The Western District of Missouri Western Division. Judgment entered 05/14/2019.

Donald Henderson Scott and Carolyn Yvonne Scott v. U.S. Bank National Association Trustee for Bayview Financial Mortgage Pass-Through Certificates, Series 2005, M&T Bank, Bayview Loan Servicing, LLC, Rob Clifton, Anderson Law, LLC, Mila Homes, LLC, Corinthian Mortgage Corporation, Security Land Title Company, and South Law, P.C.; Adversary No. 19-4006; United States Bankruptcy Court For The Western District Of Missouri. The Judgment entered 04/09/2019.

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## Citations of Opinions

Scott v. U.S. Bank, No. 4:19-cv-00308-DGK (W.D. Mo. May. 14, 2019)

### Statement of the Basis for the Jurisdiction

The Bankruptcy Court had jurisdiction in the first appealed case (19-04006-btf) pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1334(a), 28 U.S.C. § 1367, 28 U.S.C. § 1452(a) and FRBP 9027(a)(2). The Notice of Removal to the Bankruptcy Court included a federal-law question of federal jury demand pursuant to FRBP 9015(a) and Bankruptcy Court's Local Rule 9015-1. The District Court had jurisdiction in the appealed case (4:19-cv-00308-DGK) pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1334(a), 28 U.S.C. § 1367, 28 U.S.C. § 158(a), and FRBP 8005. The circuit court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, 28 U.S.C. § 158(d), and FRAP 6(b). The circuit court's Judgment dismissing the case was dated August 07, 2019. The circuit court's Order denying Rehearing by Panel was dated September 13, 2019. The Petitioners were granted an extension of time within which to file this writ to and including February 19, 2020 – Application No. 19A625. This Court has jurisdiction pursuant to 28 U.S.C § 1254..

### Constitutional Provisions and Statutes

#### Amendment VII:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of

trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.”

28 U.S. Code § 158. Appeals (see appendix 5a)

28 U.S. Code § 1291. Final decisions of district courts:

“The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.”

28 U.S. Code § 1331. Federal question:

“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

28 U.S. Code § 1367. Supplemental jurisdiction (see appendix 7a)

28 U.S. Code § 1447. Procedure after removal generally (see appendix 8a)

28 U.S. Code § 1452. Removal of claims related to bankruptcy cases (see appendix 9a)

28 U.S. Code § 1254. Courts of appeals; certiorari; certified questions:

“Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.”

#### Statement of The Case

On 01/14/2019, the Petitioners filed a Notice of Removal for Case: 18CY-CV07714 from the Court of the 7th Judicial Circuit, Clay County, Liberty, Missouri to the United States Bankruptcy Court, Western District of Missouri (Kansas City) In paragraph 6 of the Notice of Removal, the Petitioners demanded a jury trial pursuant to FRBP 9015(a) and Bankruptcy Local Rule 9015-1. The issues for the jury trial were cancellation of written instruments, quiet title, declarative relief, to assert the non-existence of a default on a loan, common-law restitution where the value in controversy exceed twenty dollars (\$539,073.52), and wrongful foreclosure.

The Petitioners' federal jury trial demand of 01/14/2019 was acknowledged by the bankruptcy court's judge in multiple references in the text of his order remanding the case – see appendix 4a pages 19, 22, 26, 30, 31, 32, 34, 35, 37, and 38. Also references to the common-law restitution amount of \$539,073.52 are on pages 20 and 22 in the same appendix.

On 04/09/2019, the bankruptcy court entered its Order of the Court -- Order Abstaining and Remanding Adversary Proceeding to the Circuit Court of Clay County, Missouri (see appendix 4a) denying a federal jury trial and remanding to state court by finding *inter alia* that "... the state court may adjudicate all causes of action and conduct any jury trial. ..."

On 04/19/2019, Petitioners filed their Notice of Bankruptcy Appeal with their election of the District Court to hear the appeal.

On 05/14/2019, the District Court issued its Order Denying Appeal from Bankruptcy Court (see appendix 3a) and affirming the bankruptcy court's order.

On 05/23/2019, the Petitioners filed a Notice of Appeal to the Court of Appeals for the Eighth Circuit.

On 08/07/2019, the circuit court's Judgment (see appendix 2a) dismissed the case for lack of jurisdiction.

On 09/13/2019, the circuit court's Order denying Rehearing by Panel (see appendix 1a) was dated.

This writ follows an extension of time to file.

## Reasons for Granting the Writ

The Circuit Court had multiple statutory authorizations for jurisdiction to hear the case.

- I. The Circuit Court misapprehended the Bankruptcy Court's federal question jurisdiction under 28 U.S.C. § 1331 in a way that conflicts with decisions of the U.S. Supreme Court. Once the removal to federal court and a 7th Amendment federal jury trial demand was effectuated, exclusive competence to adjudicate the case resides in the federal court and may not be remanded to state court until all federal law claims in the case have been eliminated. See *Simler v. Conner*, 372 U.S. 221, 222 (1963). The federal right to a jury trial is also "dictated by the clear command of the Seventh Amendment" to the United States Constitution See U.S. Const. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. . ."). *Marra*, 83 F.3d at 230. The Supreme Court has "construed" the right to a jury trial provided by the Seventh Amendment "to require a jury trial on the merits in those actions that are analogous to 'Suits at common law.'" *Tull v. United States*, 481 U.S. 412, 416 (1987). The Seventh Amendment preserves the right to a jury trial in "suits at common law" filed in federal court. *Tull v. United States*, 481 U.S. 412, 417 (1987). The Eighth Circuit has held that the Seventh Amendment provides a right to a jury trial in federal court for an action brought ... in which the Plaintiff seeks compensatory damages. *Kampa v.*

*White Consolidated Ind., Inc.*, 115 F.3d 585, 586-87 (8th Cir. 1997). See also *Simler*, 372 U.S. at 222, 83 S.Ct. 609 ("The federal policy favoring jury trials is of historic and continuing strength. *Parsons v. Bedford*, 3 Pet. 433, 446-449; *Scott v. Neely*, 140 U.S. 106; *Byrd v. Blue Ridge Rural Electric Cooperative, Inc.*, 356 U.S. 525, 537-539; *Beacon Theatres, Inc., v. Westover*, 359 U.S. 500; *Dairy Queen, Inc., v. Wood*, 369 U.S. 469. Only through a holding that the jury-trial right [in federal court] is to be determined according to federal law can the uniformity in its exercise [,] which is demanded by the Seventh Amendment [,] be achieved.") (internal footnote omitted). "The right to a jury trial in federal court, regardless of whether the claim arises under state law, presents a question of federal law." *Afr. v. City of Phila.*, 158 F.3d 723, 727 (3d Cir. 1998). This policy applies "even when a state statute or state constitution would preclude a jury trial in state court." *Marra v. Phila. Hous. Auth.*, 497 F.3d 286, 313 (3d Cir. 2007) (quoting *Gipson v. KAS Snacktime Co.*, 83 F.3d 225, 230 (8th Cir. 1996)).

- II. The Circuit Court misapprehended its jurisdiction under 8 U.S.C § 1447 in a way that conflicts with decisions of the U.S. Supreme Court. The Bankruptcy Court may not remand a suit to the state court on a ground not specified in the removal statute. The circuit court has jurisdiction to review the Bankruptcy Court's abstention and remand order, notwithstanding 28 U.S.C. §§ 1447(d) and 1452(b). The Supreme Court has held that the prohibitions on appeal contained in the general removal statute, 28

U.S.C. § 1447(d), apply to cases remanded pursuant to 28 U.S.C. § 1452(b). See *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127-29 (1995). Section 1447(d), where applicable, see *Thermtron Products, Inc. v. Hermandorfer*, 423 U.S. 336, 345-52 (1976) (appellate review limitations of remands under section 1447(d) apply only to remands on grounds specified in section 1447(c)), bars review "on appeal or otherwise."

- III. The Circuit Court misapprehended its jurisdiction under 28 U.S.C. § 1291 in a way that conflicts with decisions of the U.S. Supreme Court. The Supreme Court held, in *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996), that "An abstention-based remand order is appealable under 28 U.S.C. § 1291. The Bankruptcy Court's order in this case was an abstention-based remand order under U.S.C. Section 1447(d). The Circuit Court had jurisdiction pursuant to 28 U.S.C. § 1291.
- IV. The Circuit Court misapprehended its jurisdiction under 28 U.S.C. § 158(d)(1) in a way that conflicts with Eighth Circuit Court of Appeals precedent. In an Appeal in a Bankruptcy Case from District Court review of a Bankruptcy Court order under FRAP 6(b), 28 U.S.C. § 158(d)(1) applies. The court of appeals has jurisdiction to independently review the Bankruptcy Court's decision using the record on appeal outlined by FRAP 6(b)(2)(B)(iii). *In re Foust*, 52 F.3d 766, 768 (8th Cir. 1995) ("we review the Bankruptcy Court's factual findings for clear error and its

conclusions of law de novo. *Sinclair Oil Corp. v. Jones (In re Jones)*, 31 F.3d 659, 661 (8th Cir. 1994). The appellate review of the Bankruptcy Court's decision is independent of the District Court's opinion. See *Heartland Fed. Sav. Loan Ass'n v. Briscoe Enters., Ltd.* (In re Briscoe Enters., Ltd.), 994 F.2d 1160, 1163 (5th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 114 S.Ct. 550, 126 L.Ed.2d 451 (1993).

V. The Circuit Court misapprehended the Bankruptcy Court's supplemental (pendant) jurisdiction under 28 U.S.C. § 1367 in a way that conflicts with decisions of the U.S. Supreme Court. See *Mine Workers v. Gibbs*, 383 U.S. 715: "Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim 'arising under [the] Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . .,' U.S. Const., Art. III, § 2, and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.' . . . The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole." 383 U.S., at 725 (emphasis in original). Federal jurisdiction in *Gibbs* was based upon the existence of a question of federal law. Indeed, federal question jurisdiction exists when

a federal issue is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disturbing the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013).

## Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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