docket no.: 20-1418

Supreme Court of the United States

SEPIDEH CIRINO

Petitioner,

v.

OCWEN LOAN SERVICING, LLC, et al.

Respondents.

On Petition for a Writ of Certiorari
to the U.S. Court of Appeals for the Ninth Circuit
Ninth Circuit case no. 19-55817
U.S. Dist. Ct., C.D. Cal., case no. 16-cv-00409

PETITION FOR WRIT OF CERTIORARI

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In Pro Se

QUESTIONS PRESENTED FOR REVIEW

1. How can a mortgagor collect on more than the amount of the lien secured by the deed of trust when a debtor in a Chapter 7 bankruptcy in California, as well as similarly situated nonjudicial foreclosure states which utilize a promissory note as the promise to pay and deed of trust as the security lien for the mortgage, receives a discharge pursuant to 11 U.S.C. §524, when the debt has been discharged in personam?

PARTIES TO THE PROCEEDING

SEPIDEH CIRINO; and

-Plaintiff/Appellant/Petitioner

OCWEN LOAN SERVICING, LLC;

WESTERN PROGRESSIVE, LLC; and

WELLS FARGO BANK, N.A., as Trustee for holders of IMPAC SECURED ASSETS CORP. MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2004-44

-Defendants/Appellees/Respondents

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS

The March 15, 2019, Order of the U.S. District Court for the Central District of California in case no. 18-CV-00409, dismissing Petitioner's First Amended Complaint as to some causes of action with prejudice and some with leave to amend. It is included herein as Appendix A.

The June 20, 2019, Judgment of the U.S. District Court for the Central District of California in case no. 18-CV-00409, entering Judgment for Respondents' after granting Respondents' Motion to Dismiss Petitioner's Second Amended Complaint with prejudice as to the remaining causes of action. It is included herein as Appendix B.

The August 7, 2020, Memorandum Disposition as to Petitioner's Appeal affirming the decisions of the District Court is not certified for publication and has not been reported. It is included herein as Appendix C.

The October 7, 2020, Order of the U.S. Court of Appeals for the Ninth Circuit in case no. 18-00409, denying Petitioner's timely request for a panel rehearing is not certified for publication, and has not been reported, but is included in this petition as Appendix D.

STATEMENT OF THE BASIS FOR JURISDICTION

The District Court entered judgment on June 20, 2019, and the Ninth Circuit affirmed the judgment. Petitioner then timely sought rehearing (panel) but was denied on October 7, 2020. Pursuant

to 28 U.S.C. § 1254(1), the U.S. Supreme Court has jurisdiction over this petition in that the final judgment in question is from the U.S. Court of Appeals, and – through this petition – Petitioner is seeking to vindicate rights arising under the federal Constitution and statutes.

The initial petition was filed on January 4, 2021, which is less than 90 days after the Ninth Circuit's October 7, 2020, denial of rehearing, meaning this petition was timely. A correction notice was sent dated January 8, 2021, which provided 60 days to submit this Writ of Certiorari. As such this is timely. 28 U.S.C. § 2101(c); on or about U.S. Supreme Court Rules 13.1 and 13.3. The notifications described in U.S. Supreme Court Rule 29.4 are not required, since the U.S. is not a party and since Petitioners are not questioning the constitutionality of any federal or state law.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition involves 11 U.S.C. §524(a)(2) which operates "as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived."

This petition also involves 28 U.S.C. § 2111, which states, "On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties."

INTRODUCTION

The underlying case was regarding the debt of Petitioner Sally Cirino ("Petitioner") as to her family home and her legal right to validate the debt and contest a third parties right to collect on their debt. Ocwen Loan Servicing, LLC, Western Progressive, LLC, and Wells Fargo Bank N.A., as Trustee for holders of IMPAC Secured Assets Corp. Mortgage Pass-Through Certificates Series 2004-4 ("Wells Fargo" and collectively "Respondents") are the Respondents subject to this writ of certiorari.

Petitioner Cirino has possessory interest in the real property located at 27495 Hidden Trail Road, Laguna Hills, California, 92653-5875 (the "Property"). [Petitioners' Appendices "PA" p. A-4].

On or about October 29, 2004, Petitioner Cirino and her husband John Cirino executed a promissory note ("Note") on the Property in the amount of $1,320,000.00 [PA p. A-5]. This Note was to secure a mortgage loan ("Loan") from Alliance Bancorp on behalf of GMAC Mortgage, LLC, and funded as part of a trust for which Wells Fargo, N.A. is the alleged trustee [PA p. A-5]. On or about October 29, 2004, a deed of trust ("Deed") was executed in the names of John and Sepideh Cirino in the amount of $1,320,000.00. [PA p. A-5]. On or about October 29, 2004, Petitioner Cirino and her husband executed a grant deed conveying the Property to the Cirino Family Trust ("Trust") [PA p. A-5].

Petitioner Cirino also pled that the Note was discharged in bankruptcy proceedings pursuant to 11 U.S.C. § 524 [PA p. A-5]. On or about February

27, 2012, Petitioner Cirino's husband received a discharge of his Chapter 7 Bankruptcy, and Petitioners pled that the Note was discharged as to him at this time [PA p. A-5]. On or about December 21, 2012, Petitioner Cirino received a discharge of her Chapter 7 Bankruptcy, case number 8:11-bk22081-MW, and Petitioners allege that the Note was discharged as to Petitioner Cirino at this time [PA p. A-5]. Petitioner alleges that at the time of her discharge, the Note "ceased to exist" and "[o]nly the Deed remains in effect." [PA p. A-5].

In June 2014, John Cirino passed away and at that time. [PA p. A-5-6]. On November 14, 2016, Defendant Western caused to be recorded a Notice of Default ("NOD") and Election to Sell under the Deed of Trust [PA p. A-6]. The NOD stated that the delinquency amount for the Property was $501,728.00 as of November 25, 2016 [PA p. A-6]. The NOD included a Debt Validation Notice ("DVN") stating the reinstatement amount was "$1,351,485.55 plus interest from 08/01/2010." [PA p. A-6]. The NOD stated this amount included the original sum of $1,320,000.00, plus interest and late charges and also informed Petitioner that they were "responsible to pay all payments and charges due under the terms and conditions of the loan documents which come due subsequent to the date of this notice including, but not limited to, foreclosure trustee fees and costs, advances and late charges." [PA p. A-6].

On April 7, 2017, Respondents recorded a Notice of Trustee Sale ("NTS"), no. 2017000139885, and a trustee sale of the Property was calendared for May 25, 2017 [PA p. A-6]. The Notice of Trustee Sale

stated the total "unpaid balance of the obligation secured by the property...is $1,792,486.20." [PA p. A-6]. Respondents later continued the Trustee Sale to March 23, 2018, and served Respondents with a new Notice of Trustee Sale listing the total obligation as $1,804,184.99. [PA p. A-6].

As discussed infra, the District Court as well as the Court of Appeal erred because they held that the Note, executed by Petitioner Cirino and her now deceased husband John Cirino, were in full force and effect and therefore collectable despite both Mr. and Mrs. Cirino receiving bankruptcy discharges of the Note [PA p. A-5; A-36]. The legal effect is that it is no longer enforceable against Petitioner Cirino personally as she holds the surviving interest.

Petitioner petitioned for rehearing based on the fact that the Order to her nearly 50 page Appellants' Opening Brief was a violation of the Due Process Clause because it was 2.5 pages and severely flawed including the decision by the Court of Appeal that the District Court did not err when it held that the promissory note was not discharged in Mr. and Mrs. Cirino's Chapter 7 bankruptcies [PA p. A-34-38]. Petitioners' petition for rehearing was denied [PA p. A-39-40].

As California, as well as 30 other states, now utilize promissory notes, as the promise to pay, and deeds of trust, the instrument creating the enforcement lien on a residential property, Petitioner seeks review by this esteemed U.S. Supreme Court as to the effect of a bankruptcy discharge as to a promissory note. Petitioner contends that the District Court as well as the Court of Appeal erred because the Note was discharged

personally therefore, the lawful creditor cannot collect on more than the lien created by the deed of trust.

Petitioner is seeking this esteemed Supreme Court adopt the reasoning that when a promissory note is discharged pursuant to 11 U.S.C. §524, that the lawful creditor cannot collect more than the amount on the deed of trust because the debt has been discharged personally as to the debtor and only the lien on the property survives.

STATEMENT OF THE CASE

A. The Substantive Facts and Evidence

Petitioner Cirino and her husband John Cirino purchased the Property subject to the underlying litigation located at 27495 Hidden Trail Road, Laguna Niguel, California, 92653-5875 ("Property") on or about July 22, 1996, for $1,070,000; this was their purchase money loan. A full reconveyance of the purchase money loan was recorded on December 1, 2004, no. 2004001065487. On or about October 29, 2004, Appellant Cirino and her husband John Cirino executed the Note and Deed on the Property in the amount of $1,320,000.00 [PA p. A-5]. The Note is the only instrument that allows for the collection of interest and penalties. The Deed creates a lien therefore it is the enforcement mechanism for the Loan. The Loan had an adjustable rate rider and had an interest only period.

Petitioner Cirino and her husband fell on hard times due to the crash of 2008 and in 2012 they both filed for Chapter 7 bankruptcy and both received discharges [PA p. A-5]. Pursuant to 11 U.S.C. §524, a permanent injunction was put in place upon

collecting on debts that were subject to the discharge.

At the time the NOD was recorded on November 25, 2016, none of the Respondents were original parties to the Note or Deed [PA p. A-5-6]. The reinstatement amount was $1,351,485.55 [PA p. A-5]. On April 7, 2017, the NTS was recorded stating the sale price for the property was $1,792,486.20 [PA p. A-6]. Between November 25, 2016, and April 7, 2017, the alleged debt ballooned by $441,000.65. The issue with the debt was the primary reason that Petitioners' filed their lawsuit. In California, the courts have been egregious regarding any issues with challenging the debt and despite this abhorrent and unexplained increase, both the District Court and Court of Appeal found that Petitioners had no valid claims against Respondents (including no right to an accounting despite this unexplained increase which would be the unlawful dispossession of Petitioner's equity [PA p. A-29]. This blatant attempt to rob Petitioner of any equity in the home is further evidenced by the fact that the debt only increased $11,698.70 between the NTS recorded on April 7, 2017, and March 23, 2018 [PA p. A-6]. Upon the forced sale of the property would become unjustly enriched by $441,000.65 which is relevant to Petitioner's argument in this writ of certiorari as discussed infra.

Based on a discharge of the promise to pay, how is it lawful to collect on more than the amount that is secured by the deed of trust? The courts of California have not properly addressed this issue therefore Petitioners claim that this is a case of first impression for this honorable United States Supreme Court and it is also relevant to the 30 other States of

the Union that utilize nonjudicial foreclosure.

B. The District Court Proceedings

On March 14, 2018, Petitioner filed a Verified Complaint for Damages [PA p. A-7].

On April 23, 2018, Petitioner filed the verified FAC prior to any judicial determination on the verified complaint for the following causes of action:

(1) Violation of 11 U.S.C. §524; (2) Violation of 12 U.S.C. §5211; (3) Violation of the Fair Debt Collection Practices Act ("FDCPA"); (4) Negligence; (5) Intentional Misrepresentation; (6) Negligent Misrepresentation; (7) Fraudulent Concealment; (8) Constructive Fraud; (9) Civil Conspiracy; (10) Defamation; (11) Intentional Infliction of Emotional Distress; (12) Negligent Infliction of Emotional Distress; (13) Quiet Title; (14) Violations of Business and Profession Code §17200, et seq.; and (15) Demand for an Accounting [PA p. A-7-8].

On May 4, 2018, Respondents filed a Motion to Dismiss and a Request for Judicial Notice [PA p. A-8].

On May 15, 2018, Petitioner timely filed an Opposition to Respondents' Motion to Dismiss [PA p. A-8] and a Request for Judicial Notice [PA p. A-8].

On May 29, 2018, Respondents filed a Reply [PA A-8].

On March 15, 2019, the District Court granted Respondents' Motion to Dismiss with prejudice as to the following causes of action: (1) Violation of 11 U.S.C. §524; (2) Violation of 12 U.S.C. §5211; (4) Negligence; (10) Defamation; (11) Intentional Infliction of Emotional Distress; and (12) Negligent

Infliction of Emotional Distress; (13) Quiet Title; (14) Violations of Business and Profession Code §17200, *et seq.* The District Court granted leave to amend as to the other causes of action [PA p. A-3-30].

On April 5, 2019, Petitioner filed the verified SAC for the following causes of action: (1) Violation of the FDCPA); (2) Intentional Misrepresentation; (3) Negligent Misrepresentation; (4) Fraudulent Concealment; (5) Constructive Fraud; (6) Civil Conspiracy; and (7) Demand for an Accounting.

On April 16, 2019, Respondents filed a Motion to Dismiss and a Request for Judicial Notice.

On April 29, 2019, Petitioner timely filed an Opposition to Respondents' Motion to Dismiss, a Request for Judicial Notice, and Evidentiary Objections.

On May 3, 2019, Respondents filed a Reply.

On May 29, 2019, the District Court granted Respondents' Motion to Dismiss as to Appellants' SAC with prejudice.

On June 20, 2019 Respondents' lodged their Order for Judgment. On June 21, 2019, the Court entered Judgment dismissing the entire case with prejudice [PA A-32].

On July 15, 2019, Petitioner timely filed a Notice of Appeal and paid the fee.

C. The Appellate Court Proceedings

On July 15, 2019, Petitioner timely filed a Notice of Appeal and paid the fee. She also timely filed her Appellants' Opening Brief. Respondents timely filed their Respondents' Brief.

On August 7, 2020, the Court of Appeal issued its memorandum of decision [PA p. A-34-37].

On August 21, 2020, Petitioner timely filed a Petition for Rehearing (panel).

On October 7, 2020, the Court of Appeal denied the Petition for Rehearing (panel) [PA p. 40].

ARGUMENT

A. Relevant History of Real Property in California

The Declaration of Independence affirms that people are endowed by their Creator with certain unalienable rights. A person's right to own property is a natural right which was protected at common law as well as codified in California. These rights were well respected and protected until the economic crash in 2008. The hand of government tried to protect those rights by codifying new laws and allocating trillions of taxpayer dollars for homeowners to keep their homes however, government bureaucracy and lack of oversight has afforded predators such as Respondents to grow wealthy abusing the system created to help the homeowners. Petitioner has been a victim of the Respondents' abuse of well settled California law as Respondents have sought the protection of the nonjudicial foreclosure system without any legal authority over Petitioner's Property even though Petitioners are only challenging Respondents authority as to the Note, Deed, and debt. In any other realm, a California resident would be able to challenge a person or entity that claimed to have authority over their debt as well as personal or real property if he/she/it were not an original party to the contract.

In early real property transactions, the mortgage was the only real property security device. The common law treated the mortgage as a conveyance of the fee title by the mortgagor to the mortgagee subject to the condition subsequent of payment of the debt. Upon payment, the title was reconveyed by the mortgagee to the mortgagor. Prior to payment of the debt, the mortgagee, as holder of title, was entitled to possession and the rents and profits produced by the mortgaged property. Upon breach of the condition, the mortgagee received an estate in fee simple absolute, free and clear of the condition. *Goodenow v. Ewer* (1860) 16 Cal. 461, 466, 1860 WL 938 (1860) [Tracing the evolution of the mortgage from the common law concept of a conveyance to the modern concept of a lien]. To further protect the home purchaser's rights, California codified the equitable rights of reinstatement or redemption. Cal. Civ. Code §2903 *et seq.*

Creditors began using the deed of trust as a real property security instrument during the 19th century because of the procedural inhibitions imposed on the mortgage by the courts and the attendant impediments to judicial foreclosure of the debtor's equity of redemption. *Koch v. Briggs* (1859) 14 Cal. 256, 262-263; 1859 WL 1213 [confirming the enforceability of a deed of trust with power of sale as not being limited by requirement for judicial foreclosure applicable to a mortgage]. A deed of trust provided the creditor with more advantages to protect its financial interest and has become the preferred security device in California. Cal. Civ. Code §2924 [The 1917 amendments to this statute

applied the same principles to a mortgage with a power of sale as to a deed of trust].

A note may be sold or transferred, but it requires an indorsement on the note or a separate allonge attached to the note and containing the indorsement. *Adolph Ramish, Inc. v. Woodruff* (1934) 2 Cal.App.2d 708, 714; *Pribus v. Bush* (1981) 118 Cal.App.3d 1003, 1010-1011 [indorsement by allonge]. The power of sale is a matter of contract where the person or entity upon whom the power is conferred has the right and power, upon specified conditions, to conduct a sale of the property, deliver a deed to the purchaser, and deliver the proceeds of the sale to the creditor for whose benefit the power of sale is given. Cal. Civ. Code §2932; see *Fogarty v. Sawyer* (1861) 17 Cal. 589, 592-593. A deed of trust is a contractual power to sell the property of the trustor held by a trustee for the benefit of the beneficiary. Cal. Civ. Code §2924.

B. The Supreme Court Should Adopt the Reasoning that in Nonjudicial Foreclosure States when a Debtor Receives a Chapter 7 Bankruptcy Discharge pursuant to 11 U.S.C. §524 the Creditor can only collect the amount of Deed of Trust

Petitionerspled in both the verified first amended complaint and second amended complaint that the promissory note was discharged in Sepideh and John Cirino's Chapter 7 bankruptcies in 2012 therefore the only the amount of the Deed can be collected. Respondents filed a motion to dismiss as to the FAC claiming that there was still a debt owed in rem however, it did not address the effect of the discharge on the Note.

On March 15, 2019, the District Court granted summary adjudication as to Petitioner's claim for violation of 11 U.S.C. §524 [PA p. A-12-13]. In its ruling, the District Court states that Petitioner was making the argument that the Note was discharged in bankruptcy however, the District Court failed to address that Petitioner pled and argued that the lawful creditor can only collect the amount of the Deed because it is the only security instrument that survived as a lien on the property. In her opposition to the motion to dismiss, Petitioner asserted that the Court should "adopt the ruling of the 10th Circuit which held that there is a "critical difference" between a judicial foreclosure and a nonjudicial foreclosure in that the nonjudicial foreclosure seeks only to enforce a security interest. *Obduskey v. Wells Fargo* (10th Circuit 2018) 879 F.3d 1216, 1220.

The District Court granted Respondents' motion to dismiss as to Petitioner's claim for violation of 11 U.S.C. §524 with prejudice [PA p. A-12-13]. The District Court, relying on *In re Marriage of Walker,* actually supports Petitioner's position because the District Court held that the debt was discharged personally and that the lien survived. The District Court erred because the consequence of the discharge of the personal liability leaves only the Deed as the lien on the property. As such, the alleged creditor cannot seek to force the sale of the property for more than the $1,320,000.00 as secured by the Deed. As such, the District Court erred when it failed to apply the logical consequence of the discharge when it ordered the cause of action dismissed without prejudice because it affirmed that a creditor may seek payment in excess of the security lien (Deed) on the property without

providing any explanation as to how it is possible when there is no longer a promise to pay (Note) that is enforceable against Petitioner Cirino [PA p. A-12-13]. *In re Marriage of Walker* (2016) 240 Cal.App.4th 986, 994.

Petitioner made the same argument on appeal. The Court of Appeal affirmed the dismissal by making the sole determination the allegations regarding the bankruptcy discharge were conclusory [PA p. A-36].

California is a nonjudicial foreclosure state. *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 926. The California Supreme Court also affirmed that the deed of trust is the security instrument for a mortgage loan. *Id* at 927. At a nonjudicial foreclosure sale, the bidder is only purchasing the lien. Cal. Civ. Code §2924f(8)(a). Further, California does not allow for deficiency judgments after a nonjudicial foreclosure. *Ho v. Recontrust Co., N.A.* (2016) 840 F.3d. 618, 622. As such, the entire debt is extinguished upon foreclosure even if the recovery is less than the debt. *Id* at 622; Cal. Civ. Code §580d(a); see *Burnett v. Mortg. Elec. Registration Sys., Inc.*, 706 F.3d 1231, 1239 (10th Cir. 2013) ("[A] non-judicial foreclosure does not result in a mortgagor's obligation to pay money — it merely results in the sale of property subject to a deed of trust."); *Alaska Tr., LLC v. Ambridge*, 372 P.3d 207, 228 (Alaska 2016) (Winfree, J., dissenting) (noting that non-judicial foreclosure "does not in and of itself collect a debt, but rather calls for the vesting and divesting of title to real property according to the parties' prior agreement" (internal quotation marks omitted)). Further, in *Ho*

the California Supreme Court affirmed that nonjudicial foreclosure was the enforcement of the security and not debt collection. *Ho* at 622.

When California enacted nonjudicial foreclosure, the business practice was the bank would fund the loan therefore it would hold the promissory note and the deed of trust. The standard operating procedure was for a bank to foreclose after a homeowner was 90 days in default. The monies owed would be well within the amount allotted under the deed of trust. After the crash of the economy in 2008, entities were unlawfully foreclosing on amounts in excess of the deed of trust due to delays in the foreclosure process where the debt allegedly increased in excess of the amount owed under the deed of trust. It became common practice, but it does not make it lawful. Pursuant to 11 U.S.C. §524, both John and Sepideh Cirino received bankruptcy discharges which muddies the waters even more because Petitioners claim that the promissory note was discharged as a matter of law. And even the Court in its dismissal of this cause of action made it clear that the debt was discharged against her personally [PA p. A-12-13]. As Petitioners deed of trust was for $1,320,000.00, on what basis can Respondents seek to collect $1,804,184.99? [PA p. A-6]. Neither the District Court nor the Court of Appeal has addressed or explained how this is possible.

To understand why it is unlawful for Respondents to seek to foreclose in excess of the deed of trust due to the Cirno's Chapter 7 bankruptcy discharges, one must take a closer look at the reasoning of *In re Marriage of Walker* to

ascertain how the Court erred in its reasoning and why the reasoning of *Obduskey,* that in nonjudicial foreclosure you cannot collect on more than the deed of trust, should apply in California as well as to the other nonjudicial foreclosure states when there is a Chapter 7 bankruptcy discharge of the promise to personally pay on the debt as memorialized in the promissory note. *Obduskey v. Wells Fargo* (2018) 879 F.3d. 1216.

In the matter of *In re Marriage of Walker*, the Court of Appeal held that "[A] bankruptcy discharge extinguishes only one mode of enforcing a claim — namely, an action against the debtor in personam — while leaving intact another — namely, an action against the debtor in rem." *Johnson v. Home State Bank* (1991) 501 U.S. 78, 84 [A matter where the debtor received a Chapter 7 discharge as to his promissory notes therefore when he filed for Chapter 13, the promissory notes were not subject to the plan because they were discharged against him personally]). The holdings in both *In re Marriage of Walker* and *Johnson* affirm that in the state of California the promissory note is discharged against the debtor in a Chapter 7 bankruptcy discharge. This reasoning must apply in the present case and this honorable Supreme Court must hold that the promissory note was discharged against John and Sepideh Cirino in 2012 and that only the lien pursuant to the deed of trust is enforceable. *In re Marriage of Walker* at 84.

The District Court clearly erred when it dismissed Petitioner's claim for violation of 11 U.S.C. §524, because it is clear that in both *In re Marriage of Walker* and *Johnson* that the promise to

pay (promissory note) was discharged and that only the lien (deed of trust) survives. Based on a discharge of the promise to pay, how is it lawful to collect on more than the amount that is secured by the deed of trust especially when the bidder is only purchasing the lien? The courts of California have not properly addressed this issue therefore Petitioner claims that this is a case of first impression for this honorable United States Supreme Court and it is also relevant to the over 30 other States of the Union that engage in nonjudicial foreclosure. *Nolo.com/legal-encyclopedia/chart-juducial-v-nonjudicial-forclosures.*

Petitioner asserts that this Court should apply the reasoning of the 10th Circuit Court of Appeal in *Obduskey* to this issue because the Court of Appeal held that when seeking a nonjudicial foreclosure the lawful creditor cannot seek more than the amount of the deed of trust because that would be debt collecting. *Obduskey v. Wells Fargo, N.A.*, (10th Circuit 2018) 879 F.3d 1216, 1220 [Holding that pursuing nonjudicial foreclosure was not debt collecting under the Fair Debt Collection Practices Act]. The *Obduskey* case was from Colorado which is a nonjudicial foreclosure state. *Id* at 1220. Unlike California, a mortgagee can seek a deficiency judgment against the mortgagor. *Id.* At 1221. Whether or not the state can seek a deficiency judgment is not relevant here because, as discussed supra, the caselaw verifies that the promise to pay (promissory note) was discharged in bankruptcy.

As there is no issue regarding any potential deficiency, the reason why this esteemed Supreme Court should adopt the reasoning in *Obduskey* to

California and similarly situated nonjudicial foreclosure states when there is a discharge pursuant to 11 U.S.C. §524 is because only the lien survives which is the deed of trust. The deed of trust does not afford for the accrual of interest because the promise to pay has been extinguished. As such, there is no legal way to force a mortgagor to pay more than what is on the deed of trust.

The District Court's order on the motion to dismiss the verified first amended complaint applied its flawed reasoning regarding Petitioner's discharged of the Note throughout the other causes of action [PA p. A-18-20, 22, 23, 26-29].

The courts in California have failed to explain how the discharge of a promissory note personally via 11 U.S.C. §524 allows the creditor to engage in nonjudicial foreclosure for amounts in excess of the deed of trust. The courts treat the promissory note like a ghost ship sitting off the coast that stealthy eases back into port when it is time to dispossess a debtor of his/her property in excess of the deed of trust which is unjust enrichment because it is taking monies that are not owed personally by the debtor through the forced sale of the property. As such, it should be the rule of law for the United States that when there is a discharge of the promissory note against a debtor personally, the mortgagee cannot collect on more than the amount in the deed of trust.

CONCLUSION

For the reasons set forth supra, Petitioner Sepideh Cirino requests that the Supreme Court issue a Writ of Certiorari to the District Court, directing it to vacate its ruling for the dismissal of

are not owed personally by the debtor through the forced sale of the property. As such, it should be the rule of law for the United States that when there is a discharge of the promissory note against a debtor personally, the mortgagee cannot collect on more than the amount in the deed of trust.

CONCLUSION

For the reasons set forth supra, Petitioner Sepideh Cirino requests that the Supreme Court issue a Writ of Certiorari to the District Court, directing it to vacate its ruling for the dismissal of Petitioner's claim for violation of 11 U.S.C. §524 as well as rectify its ruling as to the other causes of action where the District Court applied its flawed reasoning.

Respectfully submitted,

March 29, 2021

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