

No. 20-1525

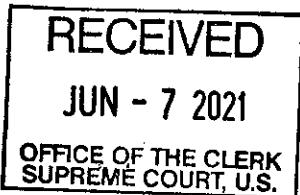
IN THE
SUPREME COURT OF THE UNITED STATES

LEWIS ARCHER
Petitioner
vs.
AMERICA'S FIRST FEDERAL CREDIT UNION
Respondent

On Petition for Writ of Certiorari To
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

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Reply to Respondents Brief in Opposition to
Four Questions Presented

The Respondent while saying this is not a Constitutional issue, makes the case why it is. Both State and Federal courts are expected to be courts of competent jurisdiction for RESPA claims according to 12 U.S.C. §2614¹. However, “no defense for Federal Loss Mitigation wrongdoing by lenders in non-judicial State Court” renders the two courts unequal. and presents a Constitutional issue. It turns Res-Judicata into a shield to protect Lenders who've broken Federal RESPA laws and then specifically go to non-judicial State Courts to escape impunity.

¹ 12 U.S.C. §2614. Jurisdiction of courts; limitations

Any action pursuant to the provisions of section 6, 8, or 9 [12 U.S.C. § 2605, 2607, or 2608] may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 6

Reply to Respondents Brief in Opposition to

LIST OF ADDITIONAL PARTIES

While Shearie Archer is an additional party, affected parties include thousands possibly millions of homeowners not only in the 21 Non-Judicial foreclosure States² but across the nation who face a tsunami of evictions and foreclosures after the Coronavirus moratorium is lifted on June 30th, 2021.

Additionally, affected parties not only include Respondent, America's First Federal Credit Union on the Respondent side but also all the Lenders in 21 nonjudicial foreclosure States who are poised to take advantage of the "no defense for Federal Loss Mitigation wrongdoing by lenders in Non-Judicial State Court" loophole after the Coronavirus moratorium is lifted on June 30th, 2021.

² **Foreclosures** are usually **nonjudicial** in the following **states**: Alabama, Alaska, Arizona, Arkansas, California, Colorado, District of Columbia (sometimes), Georgia, Idaho, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico (sometimes), North Carolina,

TABLE OF CONTENTS

Reply to Respondent's Brief in Opposition to Four -	i
Questions Presented	
Reply to Respondent's Brief in Opposition to List of	ii
Additional Parties	
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
CONSTITUTIONAL AND STATUTORY PROVISIONS	
INVOLVED	iv
Reply to Respondent's Brief in Opposition to	
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE WRIT	2
CONCLUSION	4

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Hardin v. City Title & Escrow Co.</u> , 797 F. 2d 1037, 1041 (D.C. Cir. 1986).	3
<u>Lawyers title Ins. Corp v. Dearborn Title Corp.</u> , 118 F.3d 1157, 1166-67 (7 th Cir. 1997)	3

STATUTES AND RULES

12 U.S.C. §2614	i
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14th Amendment to the United States Constitution	2
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Section 1

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

US Constitution Article VI	2
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Paragraph 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Reply to Respondents Brief in Opposition to

Statement of the Case

As the Respondent's brief in opposition unwittingly tells the U.S. Supreme Court, many predatory lenders stop accepting payments before they start the dual tracking process. Typically, after collecting tens of thousands of dollars in interest and fees from their victims. In this particular case, close to \$80,000. This way, the lender can say that the borrower has not made payments. The Respondent unknowingly tells the court the exact date it stopped accepting payments; June 2014. While Dual-Tracking is illegal under federal law and naturally is a defense against lenders in federal court, it is not a defense in non-judicial foreclosure State Court.

REASONS TO GRANT THE PETITION

I. This case is about the integrity of *res judicata*-
In Non-Judicial Foreclosure State Courts
versus Federal Courts not the elements of *res-
judicata*. Therefore, it is a Fourteenth
Amendment and a Supremacy Clause issue.

State Courts have concurrent jurisdiction over
Federal RESPA claims. The "no defense for Federal
loss-mitigation wrong doing by Lenders" in State
Court, where defense for Federal-Loss mitigation is
naturally available in Federal Court makes the two
courts inconsistent and presents a Constitutional
issue. All lenders in Non-Judicial State Court enjoy
the benefit of forum shopping where the victim had
no defense which is what concurrent jurisdiction is
intended to prevent!

II. There is compelling reason for the U.S. Supreme Court to hear the equitable tolling issue.

The Respondent does not disagree that there is currently a circuit split concerning tolling the Statute of Limitation period for RESPA cases amongst the 13 courts of Appeals. *Compare, e.g.* *Hardin v. City Title & Escrow Co.*, 797 F.2d 1037, 1041 (D.C. Cir. 1986) (finding that equitable tolling does not apply to RESPA) with *Lawyers Title Ins. Corp. v. Dearborn Title Corp.*, 118 F.3d 1157, 1166-67 (7th Cir. 1997) (finding RESPA is subject to equitable tolling).

Both, the Federal District Court's Memorandum, Opinion and Order (pg. 24 Appendix B) and the Magistrate Judge's Report and Recommendation (Pg. 58 Appendix C) acknowledge the need to harmonize the circuit

split concerning tolling the Statute of Limitation period for RESPA cases amongst the 13 courts of Appeals.

The District Court dismissed on the Equitable Tolling issue as well. Therefore, Equitable Tolling is also reviewable by the Eleventh Circuit Court.

The fact that the Lenders in the 21 “non-judicial foreclosure State-Courts can intentionally dual-track to use up a borrower’s Statute of Limitation period without impunity as demonstrated in this case, makes it a compelling reason for the U.S. Supreme Court to hear this issue.

CONCLUSION

The Respondent not only agrees with the facts supporting the four questions before the U.S.

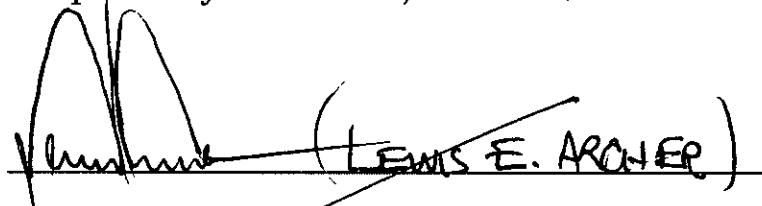
Supreme Court for Petition for Writ of Certiorari but echoes quite a few of the important facts.

1. Thousands of families are being put out of their homes by a way of a RESPA (Real Estate Settlement Procedure Act) loophole found in Non-Judicial State Court that does not exist in Federal Court.
2. There is currently a split amongst the 13 Appellate Courts of the 12 Regional Circuits concerning tolling of the 3 year statute of limitation for RESPA (Real Estate Settlement Procedure Act) cases.

The Respondent simply believes that those issues, where a tsunami of foreclosures is expected across the U.S. after the eviction and foreclosure corona virus moratorium is lifted on 6/30/2021, should simply not be factors considered by the United States

Supreme Court. We, the Petitioners disagree and
humbly pray that the U.S. Supreme Court considers
such factors in its conference concerning this Petition
for Writ of Certiorari.

Respectfully submitted,


Date: 6/3/2021