

20-398

No.

IN THE SUPREME COURT OF THE UNITED STATES

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Mary Strong, Petitioner, pro se
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ORIGINAL

COUNTRYWIDE HOME LOANS, INC., AND BANK OF AMERICA,
FEDERAL HOME LOAN MORTGAGE CORPORATION AS
TRUSTEE FOR SECURITIZED TRUST FREDDIE MAC
MULTICLASS CERTIFICATES, SERIES 3318: FREDDIE MAC,
BANK OF AMERICA,
N.A.; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, AKA
"MERS", WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA
CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE
FOR PRETIUM MORTGAGE ACQUISITION TRUST, GMAC
MORTGAGE, LLC, RELIEF DEII, LLC. and STRATAGEM ASSET-
BACKED CREDIT TRUST VI; STRATAGEM CAPITAL, LLC, AND
MATHEW ADAMS PORTFOLIO MANAGER FOR STRATAGEM
CAPITAL LLC; THE BANK OF NEW YORK TRUST COMPANY,
N.A. AS TRUSTEE FOR SECURITIZED TRUST GMAC HOME
EQUITY LOAN TRUST 2007-HE2; GMAC MORTGAGE, LLC;
RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.; GMAC
MORTGAGE, LLC; MORTGAGE ELECTRONIC REGISTRATION
SYSTEM, AKA "MERS" AND DOES 1
-100, INCLUSIVE, Respondents

FILED
SEP 04 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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PETITION FOR WRIT OF CERTIORARI TO THE 9TH CIRCUIT COURT
OF APPEALS
-----*-----

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QUESTIONS PRESENTED

Did the Trial and Appellate Courts Err:

1. Failing to recognize the unlawful lockouts barring Mary Strong's access to and use of the subject property at 65510 Old Bend Redmond Highway, Bend, Oregon, without Mary Strong's knowledge or permission, standing in Mary Strong's name only, and prior to any foreclosure action or change of documented title. See Mary Strong's Opening Brief re Wilmington v. Mary Strong filed May 8, 2018 in Case No. A166290 in the Court of Appeals, and Supplemental Memorandum In Support Of Updated Motion To Compel Production Of Documents , Case. No. 6:16-cv-00233-MC attached here and made a part of this record.
2. Failure to recognize and rule that it is not lawful for a mortgage "holder" claiming rights to a mortgage loan to make such claim without holding the original Note.
3. Failure and refusal of the 9th Circuit Court of Appeals and lower courts involved in this action to accept and admit into evidence the forensic examination and proof that Respondents do not have possession of the original Mortgage Note, with legal (*not fraudulent "robosigned" allonges*) demonstrating unbroken and legal chain of title, and documented evidence of payment by Respondents for the Mortgage Note and Deed of Trust for the property at 65510 Old Bend Redmond Highway, Bend, Oregon as required by law.
4. Failure to rule that it is not lawful for a party claiming to be the mortgage "holder" to foreclose on a mortgage without demonstration clean and clear chain of title and legal standing regarding the mortgage note See ORS 92.465 re Fraud and deceit, and Brandrup v. Recontrust Company Bac Lp 20062CB.
5. Failure and refusal to recognize and properly rule that Respondents, their predecessors, "assignors" and related parties are in violation of the Oregon Trust Deed Act which, among other elements, requires demonstration of the possession of the original mortgage note, and demonstration of evidence of payment for that note.
6. Failure and refusal to acknowledge, accept, permit, record and document testimony and evidence presented by Mary Strong and witnesses for Mary Strong

of evidence of any amount paid upon “transfer” to various “servicers” and/or mortgage derivatives for the Mortgage Note and Deed of trust or legal standing whatsoever regarding the subject property at 65510 Old Bend Redmond Highway, Bend, Oregon, as required by law.

7. Failure and refusal to recognize, acknowledge, document and record for the record the ongoing illegal chain of fraudulent, “robo-signed” and forged “assignments” of the subject Mortgage Note prior to and including the alleged “assignments” and “transfers” for the subject property at 65510 Old Bend Redmond Highway, Bend, Oregon.

8. Fundamentally ruling that Respondent(s) can fabricate, forge and for all intents and purposes “steal” a mortgage “Note” and “Deed of Trust” with no evidence of payment or possession of the original mortgage Note and Deed of Trust, and still be entitled to foreclose.

ii

PARTIES TO THE PROCEEDING

Mary Strong, Petitioner, and all listed Respondents including COUNTRYWIDE HOME LOANS, INC., BANK OF AMERICA, et al., GMAC, Stratagem Capital et al, Wilmington Savings Fund Society, et al.

RELATED CASES

- Mary Strong v. Countrywide Home Loans et al 6:16-cv-00233-MC and 6:16-cv-00331-MC
- CA A166290 and 16CV19530 re Wilmington Savings Fund Society et al
- REFERENCE ALL RELATED DOCUMENTS IN THE ATTACHED EXCERPTS OF RECORD AND EXHIBITS

iii

TABLE OF CONTENTS

QUESTION PRESENTED.....	2
PARTIES TO THE PROCEEDING.....	3
RELATED CASES.....	3
TABLE OF CONTENTS.....	3

TABLE OF AUTHORITIES.....	5
PETITION FOR A WRIT OF CERTIORARI.....	6
OPINIONS BELOW.....	6
JURISDICTION.....	7
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.....	5
INTRODUCTION AND STATEMENT OF THE CASE.....	8
REASONS FOR GRANTING THE PETITION	
I. Elements required by law.....	7
II. Statement of The Case, Nature of The Judgement.....	9
III. Basis of Appellate Jurisdiction.....	5
IV. Effective Date for Appellate Purposes.....	6
IV. Questions Presented on Appeal - Did the Court Err.....	7
V. Summary of Argument	9
VI. Statement of Facts.....	8

APPENDIX

APPENDIX 1. Plaintiff's Opening Brief 9th Circuit Case# 19-35544

APPENDIX 2. EXHIBITS 1 THROUGH 13 TO PLAINTIFF'S OPENING BRIEF re
Case No. 19-35544 United States Court of Appeals For The Ninth Circuit

APPENDIX 3. United States District Court of Oregon Judgment

APPENDIX 4. United States Court of Appeals for the Ninth Circuit Mandate

v.

TABLE OF AUTHORITIES

Reference the following cases citing points of law regarding mortgage
securitization fraud as applies to this present case:

- Brandrup V. Recontrust Company Bac Lp 2006 2CB
- DeutscheBank National Trust Company et al v. Scott J. Heinrich.
- Glaski v. Bank of America, 218 Cal. App. 4th 107.
- Hooker v. Northwest Trustee Services Inc.
- Bank Of America, et al ; McCoy, 2011 WL 477820, at *3
- Yvanova v. New Century Mortgage Corp

Statutes

ORS 92.465 re Fraud and deceit states in part "No person shall, in connection with
the offer, sale or lease of any lot, parcel or interest in a real estate subdivision or
series partition, directly or indirectly" "Engage in any act, practice or course of
business which operates or would operate as a fraud or deception upon any
person;".....pages 4, 8

The Oregon Trust Deed Act requires the recording of all assignments by the
beneficiary, and Oregon's recording requirement provides that the trust deed or
mortgage follows the note.....pages 6, 11

ORS 86.735(1) requiring the recording all the intervening assignments, was
intentionally ignored.....page 11

Regulations

ORS 79.0203¹ UCC 9-203 (Attachment and enforceability of security
interest cannot hypothecate.....page 9
UCC3-420 CONVERSION OF INSTRUMENT.....page 9
UCC 7-501(5) Form of Negotiation and Requirements of Due Negotiation....page 9
UCC 9-315 Secured party's rights on disposition of collateral
& in proceeds.....page 10
UCC 9-109 (SCOPE).....page 9

1

PETITION FOR A WRIT OF CERTIORARI

Mary Strong petitions for a writ of certiorari to review the judgment of the
Ninth Circuit Court of Appeals in this case.

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OPINIONS BELOW

Appeal from the United States District Court for the District of Oregon
Michael J. McShane, District Judge, Presiding

Submitted July 14, 2020**

Before: CANBY, FRIEDLAND, and R. NELSON, Circuit Judges.

“Mary Strong appeals pro se from the district court’s summary
judgment in her diversity action alleging foreclosure-related claims. We
have jurisdiction under 28 U.S.C. § 1291. We review de novo. *City of
Martinez v. Texaco Trading & Transp., Inc.*, 353 F.3d 758, 761 (9th Cir.
2003). We affirm. “

“The district properly granted summary judgement for defendants
Stratagem Capital, LLC and Bank of New York Mellon Trust Co., N.A., because
Strong failed to raise a genuine dispute of material fact as to whether the
foreclosure sale on the junior loan was not conducted by a duly authorized trustee.

See Or. Rev. Stat. § 86.797(1) (providing that “[i]f, under [the provisions of the Oregon Trust Deed Act, a trustee sells property covered by a trust deed, the trustee’s sale forecloses and terminates the interest in the property that belongs to a person to which notice of the sale was given”); *Woods v. U.S. Bank N.A.*, 831 F.3d 1159, 1166 (9th Cir. 2016) (describing limited circumstances under which a borrower’s post-sale challenge is not barred by Or. Rev. Stat. § 86.797(1)). “

“The district court properly granted summary judgment for defendants Countrywide Home Loans, Inc., Bank of America, N.A., Federal Home Loan Mortgage Corporation, and Mortgage Electronic Registration Systems, Inc., on the basis of the doctrine of issue preclusion, because Strong’s claims challenging the authority of these defendants to foreclose under the senior loan were actively litigated in a previous state court judicial foreclosure proceeding that resulted in a final judgment on the merits. See *Holcombe v. Hosmer*, 477 F.3d 1094, 1097 (9th Cir. 2007) (federal courts apply state law regarding the preclusive effect of state court judgments); *Berg v. Benton*, 443 P.3d 714, 717 (Or. Ct. App. 2019) (elements of issue preclusion under Oregon law). To the extent Strong alleges errors by the state court during the judicial foreclosure proceedings, her claims are barred under the Rooker–Feldman doctrine because they constitute a “de facto appeal” of the state court’s judgment. See *Noel v. Hall*, 341 F.3d 1148, 1163-65 (9th Cir. 2003) (the Rooker–Feldman doctrine bars de facto appeals of a state court decision); see also *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (a de facto appeal is one in which “the adjudication of the federal claims would undercut the state ruling” (citations and internal quotation marks omitted)).”

JURISDICTION

Mary Strong petitions for a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals in this case *Mary Strong v. Countrywide Home Loans et al* 6:16-cv-00233-MC and 6:16-cv-00331- MC CA A166290 and 16CV19530 re Wilmington Savings Fund Society et al.

INTRODUCTION AND STATEMENT OF THE CASE

The following elements are required according to law:

1. Countrywide/Bank of America may not deny refinance via the HAMP program on a conforming mortgage loan from the borrower (*Petitioner Mary Strong*) based on the false and fraudulent claim that the property in question was “condemned and/or abandoned”. See Excerpts of Record (*exhibits*) attached with documented evidence of ongoing fraud on the part of Bank of America et al in this matter, including the \$16.65 Billion Justice Department settlement for financial fraud against Bank of America and it’s “subsidiaries, Including Countrywide, et al. (pages 110 - 150 of 330 in attached Excerpts of Record).
2. Countrywide/Bank of America changed the locks *repeatedly* without Mary Strong’s knowledge or permission while the property was in Mary Strong’s name and prior to any “foreclosure” action by any derivative/CDO/property transfer conducted without Mary Strong’s knowledge or permission. **See Case No. 6:16-cv-00233-MC SUPPLEMENTAL MEMORANDUM IN SUPPORT OF UPDATED MOTION TO COMPEL PRODUCTION OF DOCUMENTS.**
3. A holder must possess the original note, and transfer of possession must be “authenticated by an affidavit or certification based upon personal knowledge.
4. A party relying upon power of attorney or other document must produce the authenticated original of that document.
5. Using the words “as attorney in fact” means nothing unless the party is able to produce a witness who, in their own personal knowledge, knows and states that the POA is in writing and has not been revoked, must be able to lay the factual foundation and authentication for introduction of the Power of Attorney or any other such document.

These elements of proof of standing, required by law, have not and never have been met by Bank of America/Countrywide, GMAC, and Stratagem et al in this present matter.

STATEMENT OF THE CASE

Nature of The Action and Relief Sought

Nature of The Judgment

Following the 2008/2009 economic "crash" the notorious HAMP program, was the **ONLY** vehicle available for Mary Strong to refinance the interest rate on her 30-year conforming mortgage following a 50% drop in conforming mortgage interest rates. A homeowner could no longer apply to their originating lender to refinance a mortgage loan, as that lender, nor any other single lender or party, legally owned the loan and Note, as it was, without the homeowner's knowledge or permission divided into multiple bits and pieces called **Collateralized Mortgage Obligations and Credit Default Swaps** and "transferred", "sold" and "assigned" with fraudulent, forged signatures, and no evidence of payment by "assignors" to "assignees".

In addition, the notorious Federal Fannie Mae "Making Home Affordable" HAMP program REQUIRED the homeowner to stop making payments in order to apply for and be considered for refinance and modification of a mortgage loan rate of interest. Mary Strong's Making Home Affordable HAMP application for interest rate modification following two years of delay and repeated request for resubmission of documents was refused in 2006 by Respondents based on the flagrantly false and fraudulent claim that the property, in pristine condition and following \$59,825.24 in capital and cosmetic enhancements paid for by Mary Strong, was "condemned and/or abandoned". See pages 13 – 20 of 330 pages in Countrywide Excerpts of Record/Exhibits attached. and ORS 92.465 re fraud and deceit.

Under 2015 ORS 79.0203¹ UCC 9-203 ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST and UCC 9-109 SCOPE, holder in due course cannot hypothecate, meaning to pledge as security without delivery of title or possession, real property.

Under UCC 3-420 CONVERSION OF INSTRUMENT an action for conversion of an instrument may not be brought by (i) the issuer or

acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.”. There must be proof of delivery of tangible instrument. This has not been documented by Respondents in this matter.

Under UCC 7-501(5) FORM OF NEGOTIATION AND REQUIREMENTS OF DUE NEGOTIATION a document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, and (c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights. These requirements regarding Form of Negotiation and Due Negotiation were not met.

Under UCC 9 – 315: SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS, MERS cannot transfer beneficial rights to debt. This requirement regarding party's rights on disposition of collateral and in proceeds were and are not met.

In the Supreme Court of Oregon re Bandrup v. Recontrust et al see the following excerpts regarding the definition and meaning of the word “beneficiary”, which “is determined by statute... and cannot be altered by the party's agreement”

- On page 16: “Indeed, we find plaintiffs (Bandrup) reading of the definition to be more compelling, on a purely textual level, than defendants'. If defendant's reading were correct, then anyone -- even a person with no connection to or interest in the transaction at all -- could be designated in the agreement. If the legislature had intended "beneficiary" to have the circular meaning that defendants suggest -- that "beneficiary" means whomever the trust deed names as the "beneficiary" it would have had no reason to include any description of the beneficiary's functional role in the trust arrangement. The fact that the statute does include such a description ("the person for whose benefit the trust deed is given") strongly suggests that the legislature

intended to define "beneficiaries" by their functional role, not their designation. Stated differently, by including such a functional description, it is apparent that the legislature intended that the beneficiary of the trust deed be the person to whom the obligation that the trust deed secures is owed."

- On page 17: "Defendants assert that the emphasized text shows that the legislature understood that the "beneficiary" need not be the lender or the lender's successor in interest. We do not agree that the statutory text necessarily-- or even probably -- bears such a construction"
- On Page 19 :" the premise is implicit -- the core of defendants' "freedom of contract" argument appears to be that, although MERS has no right to repayment of the notes in these cases, it nevertheless maybe designated by contract as the beneficiary for other functions, in particular those functions relating to the control of the foreclosure process. We disagree. The resolution of this question does not hinge on the parties' intent; rather, it depends on legislative intent. That is, the OTDA authorizes nonjudicial foreclosure only when certain statutory requirements are met. In these circumstances, the meaning of "beneficiary," as used in ORS 86.735(1), is determined by statute, and that meaning is incorporated into, and cannot be altered by, the party's agreement."

In fact, a mortgage note is not a negotiable instrument. If a "transferor" purports to transfer less than the entire instrument, negotiation of the instrument does not occur. When a servicer comes to court acting on behalf of any owner, they have necessarily been transferred less than the entire instrument. They take then no rights of a holder, and whatever rights they may have must be demonstrated and proven.

The following elements are required according to law:

- A holder must possess the original note.
- Transfer of possession must be “authenticated by an affidavit or certification based upon personal knowledge.”
- A party relying upon power of attorney or other document must produce the authenticated original of that document.
- Using the words “as attorney in fact” means nothing unless the party is able to produce a witness who, in their own personal knowledge, knows and states that the POA is in writing and has not been revoked.
- That witness must be able to lay the factual foundation and authentication for introduction of the Power of Attorney or any other such document.
- Without such foundation and authentication, any testimony or documents proffered by virtue of the POA cannot be admitted into evidence and for purposes of the case then, such statements or documents do not exist.
- A party who claims a legal relationship with another party and who relies upon it for proffering evidence must provide evidence of the legal relationship.
- A Power of Attorney must be in writing, duly signed and acknowledged as set forth in state statutes. Oral Powers of Attorney cannot be used to circumvent the requirement that interests in real property (including mortgages) must be in writing.
- A party seeking to enforce a note must be able to establish, though competent evidence, the location and the previous locations of the note in order to establish possession and the right to enforce, respectively.
- A party seeking to enforce a note must be able to establish, though competent evidence, the location and the previous locations of the note in order to establish possession and the right to enforce, respectively.
- Certifications must be based upon personal knowledge and not general familiarity.

- If testimony is offered based upon a “review” of records, the records must be present, or the witness must identify those records and how the witness acquired personal knowledge of their content.
- Assignments of mortgage must be authenticated by a person who has personal knowledge of the assignment (and the circumstances in which the assignment occurred). Otherwise the assignment is hearsay and must be excluded from evidence unless otherwise admitted for different reasons. Hearsay statements in assignments cannot be admitted into evidence and for purposes of the case then, such statements do not exist.
- The fact that an assignment or other document exists as an original or a copy does not mean that what is written on it can be admitted into evidence.
- A document signed by an agent or “nominee” like MERS after the demise of the principal is void because the power of attorney expires upon expiration of the principal. If the originator no longer exists, MERS is not authorized to act on behalf of the originator.

These elements of proof of standing, required by law, have not and never have been met by Plaintiffs US Bank Trust, N.A. et al in this present matter. I, Mary Strong, declare that all information provided in this Petition For Writ of Certiorari is true, documented and supported with evidence.

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF FILING

I certify that on _____ I filed this **Petition For Writ of**
Certiorari with the United States Supreme Court Administrator by United States
Postal Service with tracking at the following address: Clerk, Supreme Court of the
United States, One First Street, NE, Washington, DC 20543