20-5602

No.

IN THE UNITED STATES SUPREME COURT

In re: ROBYN JILL FARRINGTON, aka Robyn Jill Fleisher, Debtor

ROBYN JILL FARRINGTON, ,

Petitioner,

v.

U.S. BANK TRUST N.A., as trustee for LSF9 Master Participation Trust;
LSF9 MASTER PARTICIPATION TRUST;
CALIBER HOME LOANS, INC.; JP MORGAN CHASE BANK, N.A.

Respondents.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

Robyn Jill Farrington
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Questions Presented

1. Whether claims of fraud in a mortgage foreclosure action are barred by the Rooker-Feldman doctrine and res judicata.

2. Whether the dismissal of a challenge to the Proof of Claim filed by Caliber Home Loans Inc., on behalf of U.S. Bank Trust N.A., as trustee for LSF9 Master Participation Trust, was an abrogation of the Bankruptcy Court's equitable powers and exclusive jurisdiction over such matters.

List of Parties and Related Cases

The parties are listed in the caption.

The only related case is a Chapter 13 Bankruptcy case, which is before the U.S. Bankruptcy Court for the District of New Jersey under Case No. 17-26505-JKS.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit appears at Appendix A1 of the Petition and is unreported.

The opinion of the United States district court appears at Appendix A7 of the Petition and is unreported.

The opinion of the United States bankruptcy court on the Rule 60(b)(1) motion appears at Appendix A21 of the Petition and is unreported.

Jurisdiction

The United States Court of Appeals for the Third Circuit decided the case on January 14, 2020. By virtue of an administrative order, on March 19, 2020, the Court extended the deadline to file petitions for writs of certiorari in all cases due on or after the date of that order to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Statement of the Case

Petitioner is currently the sole owner of a 2-family home located at 530 Summit Avenue, Westfield, New Jersey ("Property"), which was first acquired on June 9, 1999. The Property is her only home.

In July 2006, Petitioner refinanced 2 prior loans on the Property through Washington Mutual Bank FA ("WMB") with an adjustable rate mortgage ("Loan"). Appellee U.S. Bank Trust N.A. ("U.S. Bank"), as trustee for LSF9 Master Participation Trust ("LSF9 Trust" together with Caliber Home Loans Inc. and U.S. Bank, "LSF9 Parties") obtained an uncontested foreclosure judgment based upon assertions that the LSF9 Trust acquired a mortgage on the home from JPMorgan Chase Bank N.A. ("JPMC") that JPMC claimed to have acquired from Washington Mutual Bank ("WMB") through the Federal Deposit Insurance Corporation ("FDIC").

However, the LSF9 Trust's claimed ownership of the Loan is based upon a completely fabricated record that is clear after examining the timeline of events underlying this case in the context of WMB's lending operations, subsequent closure and the FDIC's hastily-arranged sale of certain WMB assets to JPMC.

Generally, when banks lend to borrowers under tight lending standards, they retain ownership of loans and the corresponding credit risk (i.e., the risk that borrowers will default), and include the loans as assets on their balance sheets-typically called an "on-balance-sheet" activity. Through a process known as securitization, however, banks can convert "undesirable" loans into working capital

by selling them as investments, thereby transferring the credit risk, and removing the loans from their balance sheets, which is known as an "off-balance-sheet" activity.

Taking advantage of the securitization concept, WMB's residential lending operations primarily focused on originating high-risk, adjustable-rate loans because those facilities boasted low initial interest rates (attractive to consumers), and residential mortgage-backed securities ("RMBS") containing these loans could be sold for higher prices to institutional investors.

Rather than hold onto loans it originated, WMB securitized them using 1 of 2 separate entities, WaMu Asset Acceptance Corporation ("WMAAC") and Washington Mutual Mortgage Securities Corporation ("WMMSC"), both subsidiaries of WMB's parent company, Washington Mutual Inc. ("WMI"). Both WMAAC and WMMSC were special purpose vehicles that acted as a "depositor" or "securitizer" for hundreds of WMBsponsored RMBS trusts--mere conduits that acquired loan pools from WMB and simultaneously sold those pools to RMBS trusts.

Another WMI subsidiary, Washington Mutual Capital Corporation, underwrote, marketed and sold RMBS certificates backed by future cash-flows on the loan pools. These transactions were all "off-balance sheet activities," meaning they were not reflected on WMB's books and records.

What made this scheme more profitable for WMB was that, after "securitizing" (i.e., selling) all of its loans, WMB continued earning income on those same loans from the more-valuable servicing rights, and also acted as custodian of

all loan documents. Both WMAAC and WMMSC also publicly stated in various prospectuses filed with the SEC that notes and mortgages for securitized WMB loans would not be endorsed or assigned to any of the MBS trusts. See WaMu Mortgage Pass-Through Certificates, Series 2006-AR9 Trust, Free Writing Prospectus (Jul. 13, 2006) at p. S-38, available at http://www.secinfo.com/dsvRa.v25g.htm

This aggressive business model gave WMB access to virtually-unlimited funds to originate new loans (through sale and retained servicing rights), as well as complete control over the collateral files. In effect, WMB retained all of the benefits of loan-ownership without any of the associated risks.

In March 2012, Petitioner retained a securitization analyst, William D. McCaffrey to perform an audit of the Loan. Utilizing industry-specific software that permits access to loan-level data of any "named Trust-Entity," McCaffrey traced the Loan and discovered that it was securitized and sold/transferred into the WaMu Mortgage Pass-Through Certificates, Series 2006-AR9 Trust ("2006-AR9 Trust"). Documents filed with the SEC indicate that the depositor (i.e., the entity that held the loan pool prior to securitization) for the 2006-AR9 Trust was WMAAC, which indicates that WMB sold the Loan to WMAAC after origination.

Furthermore, the Prospectus Supplement for the 2006-AR9 Trust stated that "it is the intent of the parties to the pooling agreement that the conveyance of the mortgage loans and the related assets to the [2006-AR9] Trust constitute an absolute sale of those assets." WaMu Mortgage Pass-Through Certificates, Series

2006-AR9 Trust, Prospectus Supplement (Form 424B5) (Jul. 25, 2006) at p. S-38 (emphasis added) available at http://www.secinfo.com/dsvRa.v31p.htm. Also according to this document, even though all loans in the pool were sold with absolution on July 26, 2006, to the 2006-AR9 Trust, no assignments would be executed, and the original loan documents (e.g., the original "wet-ink" note), would remain in WMB's possession as custodian. The prospectus, as well as the Pooling and Servicing Agreement appended thereto, also state that WMB would service the loans in the 2006-AR9 Trust. See Ex. 4.1, WaMu Mortgage Pass-Through Certificates, Series 2006-AR9 Trust, Current Report (Form 8-K) (Aug. 10, 2006) available at http://www.secinfo.com/DB/SEC/ 2006-000/1277/277-0005/95-003.pdf.

On July 26, 2006, WMB executed an Affidavit of Lost Note, which stated that a "due and diligent search" was conducted for the original note for the Loan, and that the "search failed to locate said promissory note, and said promissory note is deemed lost." This is probative for several reasons, including the fact that the "due and diligent search" was made the same day that the 2006-AR9 Trust transaction closed. Moreover, in a letter to me dated August 14, 2007, WMB confirmed that it no longer owned the Loan and was only the servicer, stating: "We have conducted our annual review of your mortgage loan on the above referenced property. Washington Mutual Bank, FA has retained only servicing rights on your loan."

On September 25, 2008, the former Office of Thrift Supervision closed WMB and named the FDIC as receiver. That same day, JPMorgan Chase Bank N.A. ("JPMC") entered into a Purchase and Assumption Agreement ("PAA") with the

FDIC to purchase certain assets of WMB. The PAA defined "assets" as "all assets ... purchased pursuant to Section 3.1," specifically excluding assets owned by subsidiaries of WMB; and, according Section 3.1, JPMC purchased "all right, title, and interest of the [FDIC] in and to all of the assets ... [and JPMC] specifically purchases all mortgage servicing rights and obligations of [WMB]."

The PAA provided that JPMC was to provide the FDIC with a complete statement of all assets and liabilities shown on WMB's books as of the date WMB closed and identifying which assets/liabilities JPMC acquired and which assets/liabilities the FDIC retained. JPMC was also required to provide the FDIC with an electronic database of all loans, deposits, subsidiaries and other business ventures owned by WMB as of the date it closed. Despite those requirements, though, the FDIC has stated that it has no record of any inventory of the loans owned by WMB as of September 25, 2008, leading one to conclude that WMB did not own any loans as of that date.

Since WMB was still acting as servicer for mortgage loans securitized through WMAAC and/or WMMSC when it was closed, JPMC became the servicer for those accounts under the PAA; and, having acquired WMB's various banking branches and administrative offices, JPMC also controlled WMB's document vaults, where collateral files (including original notes) for thousands of mortgage loans originated by WMB and later securitized, were stored. After taking control of WMB, JPMC undoubtedly conducted a comprehensive review of WMB's assets and, therefore, was surely aware that WMB held no mortgage loans. Indeed, as stated

above, no loans were "on the books" when WMB closed, a fact recognized by the Supreme Court of New York in 2013. See *JPMorgan Chase Bank N.A. v. Butler*, 975 N.Y.S.2d 366 (Supreme Ct. Kings Co. 2013)

But JPMC also knew that since WMB never endorsed or assigned any of its securitized loans to the RMBS trust entities, it could easily create a paper trail to give itself title to thousands of loans backed by billions of dollars in collateral. So, capitalizing on the FDIC's lack of direct oversight, the confusion created by WMB's closure, and public perception that it acquired ownership of all mortgage loans originated by WMB, JPMC seized collateral documents from WMB's vaults and, years after WMB closed, began unilaterally assigning notes to itself as "attorney-in-fact" for the FDIC.

This precise issue has been the subject of numerous lawsuits against JPMC by investors and others, including civil racketeering claims brought by Mortgage Resolution Servicing Inc. ("MRS"), which bought a pool of WMB-originated mortgage loans from JPMC that had actually been sold by WMB into RMBS trusts. MRS alleges that even though JPMC represented that it owned (and had the right to transfer) the loans it was selling to MRS, those loans were not owned by JPMC at all. Specifically, MRS asserts that some of the loans it was sold were RMBS trust loans that JPMC was only servicing and that JPMC essentially off-loaded these "assets" to MRS conceal regulatory non-compliance and fraud.

To carry out this sophisticated scheme, JPMC funneled thousands of loan documents through its offices in Monroe, Louisiana, where employees were armed

with signature duplication machines and pre-signed endorsement stamps of former WMB officials stored in WMB's vaults. Where the original notes were missing, JPMC employees would recreate "wet ink" signatures on the notes using signing machines and apply blank endorsements from WMB using the pre-signed stamps; and where the original notes were found in WMB's vaults, JPMC employees would simply stamp the endorsement from WMB on it. This practice, known as "robosigning," was widely publicized and JPMC, along with several other mortgage servicers and title companies, were sued by the U.S. Department of Justice and numerous state attorneys general for creating these fraudulent documents and forced to pay billions in fines for using those documents in foreclosure proceedings throughout the country.

The pre-signed endorsement stamp of one former WMB employee, Cynthia Riley, appears on thousands of notes (including at least one version of the note on the Loan); and, deposition testimony given by Riley in a 2013 Florida foreclosure case outlines the manner in which her signature stamp was used for endorsement purposes (supporting the previously-referenced New York state-court ruling) and provides a verifiable timeline of her employment with WMB.

Riley was promoted to Vice President of Secondary Delivery Operations in WMB's Jacksonville, Florida facility, in or around June 2004, where she led a staff of 10-12 people in the "note review unit" who used her facsimile signature stamp to execute notes. Riley testified that she never personally reviewed or put an endorsement stamp on a note, and that she was laid off from her position as Vice

President of WMB when the Jacksonville office moved to Florence, South Carolina in November 2006. Riley's endorsement stamp becomes particularly relevant here in the context of JPMC unilaterally assigning the Loan to itself and flipping it to the LSF9 Trust on the same day--December 23, 2014.

On January 12, 2015, the LSF9 Trust filed a foreclosure action in the Superior Court of New Jersey, under Docket No. F-000991-16. An Affidavit of Service was filed with the state court on February 19, 2016, stating that Petitioner was personally-served with the complaint on January 16, 2016, but described Petitioner as a "Black" female with "Blonde" hair.

In reality, Petitioner was not served at all and first became aware of the foreclosure action in September 2016, when the LSF9 Trust filed a motion for final judgment. Petitioner attempted to appear in the foreclosure action and argue certain defenses, but the state court refused to consider any of my arguments, including the fact that Petitioner was never served with the complaint, and remanded the case to the Superior Court Clerk's Office of Foreclosure as an uncontested case. On May 27, 2017, the Superior Court Clerk entered an Uncontested Order for Final Judgment of Foreclosure.

On August 14, 2017, Petitioner filed a Chapter 13 Bankruptcy Petition before the U.S. Bankruptcy Court for the District of New Jersey ("Bankruptcy Court"), which is currently pending under Case No. 17-26505-JKS ("Bankruptcy Case"). Petitioner then filed an Adversary Complaint in the Bankruptcy Case on December 18, 2017 ("Adversary Complaint"), against Appellees challenging the LSF9 Trust's

ownership of the Loan and seeking to discharge any claim the LSF9 Parties had.

Despite WMB's affidavit stating that the note was lost, the LSF9 Parties submitted a Proof of Claim ("POC") in the Bankruptcy Case on December 21, 2017, that supposedly appends a copy of the original note, which has no endorsement stamp. Interestingly, the supposed note appended to the POC is 6 pages long, however, the signature page is not the signature page to the note.

Rather, that page is extracted from an Adjustable Rate Rider Petitioner executed with the mortgage and note, which is clearly evidenced by the language on that page confirming what the document actually is. Additionally, the form numbers appearing at the bottom of this signature page are different than the other 5 pages of the purported note (i.e., the signature page shows "32843 (11-01)" on the bottom left corner and "LRD02USF (VERSION 1.0)" on the bottom right corner, whereas the other 5 pages show "32859 (11-01)" on the bottom left corner and "LNT60USE (VERSION 1.0)" on the bottom right corner.

What is more, the purported note filed with the POC is one of several different versions Appellees claim to be the original, one of which was submitted as part of the state-court foreclosure action (also with the rider page as the signature page) with Riley's endorsement stamp. This inconsistent "patchwork" is representative of the fraudulent document creation and manipulation used by JPMC, and now LSF9 Trust, throughout the country.

The LSF9 Parties' also responded to the Adversary Complaint with a motion to dismiss, which was heard on April 3, 2018, before the Honorable John K.

Sherwood, U.S.B.J. On April 11, 2018, Judge Sherwood issued an oral opinion on the record, and the following day, on April 12, 2018, issued an Order dismissing the Adversary Complaint.

Following that decision, Petitioner's bankruptcy attorney and Petitioner contacted JPMC by telephone and, during that call, spoke with a loss mitigation specialist who repeatedly stated that the loan data in JPMC's system confirmed that JPMC never owned the loan and was only its servicer. (Appellant Appendix, Vol. II, pp. A29-A31.) Indeed, the representative specifically stated that the loan was listed in JPMC's system as an investor loan, listing the "investor" as "private securitized." *Ibid.*

In the meantime, Petitioner filed an appeal from that Order to the U.S. District Court; and, after briefing, the Honorable Jose L. Linares, Chief Judge (now retired) issued an opinion and order affirming Judge Sherwood's ruling on March 11, 2019. The Third Circuit (JORDAN, BIBAS and PHIPPS, Circuit Judges) affirmed in a non-precedential opinion.

REASONS FOR GRANTING THE PETITION

1. The *Rooker-Feldman* doctrine does not apply here

While *Rooker-Feldman* proposes that "lower federal courts possess no power whatever to sit in direct review of state court decisions," *Atl. Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 296 (1970), the doctrine does not apply expansively to any claim where a state court action involved the same subject matter. The doctrine only addresses the "limited circumstances" in which a federal court is precluded from exercising subject-matter jurisdiction "in an action it would otherwise be empowered to adjudicate under a congressional grant of authority." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005) (emphasis added).

Whether Rooker-Feldman precludes federal court jurisdiction over a claim requires consideration of four factors (1) the federal plaintiff lost in state court; (2) the plaintiff complain[s] of injuries caused by [the] state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments. See *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 87 (2d Cir.2005)).

When a plaintiff asserts injury caused by the defendant's actions and not by the state-court judgment, Rooker-Feldman is not a bar to federal jurisdiction. A useful guidepost is whether the injury complained of in federal court existed prior to the state-court proceedings and thus could not have been "caused by" those

proceedings.

This test becomes more complicated when a federal plaintiff complains of an injury that is in some fashion related to a state-court proceeding, and in such situations the timing of the injury becomes a critical factor in the examination. If the claimed injury is based on a defendant's conduct, including conduct that resulted the state-court judgment, the federal suit is independent, even if it asks the federal court to deny a legal conclusion reached by the state court.

If a matter was previously litigated in state court, in whole or part, and the federal court then reaches a conclusion contrary to a judgment by the [state] court, without concerning itself with the bona fides of the prior judgment, the federal court "is not conducting appellate review, regardless of whether compliance with the second judgment would make it impossible to comply with the first judgment." *Bolden v. City of Topeka*, 441 F.3d 1129, 1143 (10th Cir.2006).

In the instant case, the LSF9 Parties' motion to dismiss was based on a misconception that Petitioner is challenging the validity of the underlying mortgage and note, when in fact she is challenging only the LSF9 Trust's alleged ownership of that mortgage and note--a markedly different claim.

With regard to the mortgage and note that LSF9 Trust claims to own in this case, the documentation referenced above--including the various SEC filings by WMAAC, McCaffrey's audit, the Affidavit of Lost Note and, most importantly, the supposed note filed with the Proof of Claim--clearly demonstrate that JPMC was only the servicer for the Loan and never held any ownership interest. Moreover,

JPMC's own representative admitted to me in a recorded telephone call that JPMC never owned the Loan and was just servicing it. (Appellant Appendix, Vol. II, pp. A29-A31.) It necessarily follows, then, that JPMC could not have sold or assigned ownership interest to LSF9 Trust.

This point is significant in distinguishing between what the LSF9 Parties claim Petitioner is challenging and what she really is challenging. Specifically, Petitioner does not claim that Petitioner did not obtain a loan or that Petitioner may not owe a debt; Petitioner am simply arguing that Petitioner does not owe that debt to LSF9 Trust or JPMC.

Thus, this dispute is not about the validity of the actual mortgage or note, but about the LSF9 Parties and/or JPMC's standing to enforce the debt and their duplicitous conduct in attempting to convince the courts that they do have that standing.

In 2012, the District Court addressed this issue as well, declining to dismiss a complaint, holding that a plaintiff's challenge to defendants' actions in procuring a state-court judgment is not barred by RookerFeldman, "even though the lawsuit may require review of the state court litigation and may hold that the state court judgments are erroneous." *Giles v. Phelan Hallinan & Schmieg LLP*, 901 F.Supp.2d 509, 522 (D.N.J.2012).

As to the second factor, the injury clearly resulted from JPMC and the LSF9 Parties' actions prior to the state court judgment. By recording an assignment for a mortgage that JPMC admits it never had title to, JPMC (and LSF9 Trust) clouded

title to my home. JPMC unequivocally knew that it did not own the mortgage, and LSF9 Trust made no effort to investigate or address the fact that there was never any assignment to JPMC prior to accepting any assignment from JPMC. The lack of due diligence suggests that LSF9 Trust is not an innocent third-party but at least constructively complicit in JPMC's fraudulent scheme to profit from the utter disarray and confusion created by WMB's closure. The LSF9 Parties misled the state court to procure the foreclosure judgment, then misled Judge Sherwood to procure dismissal of the Adversary Complaint and enforce a debt LSF9 Trust has no title to, then misled Judge Linares into affirming the dismissal.

The rightful mortgagee and note-holder is believed to be the 2006-AR9 Trust and, given the opportunity, this can be confirmed through JPMC and/or the LSF9 Parties' own records.

With regard to the fourth requirement, Petitioner did not ask the Bankruptcy Court to review the "bona fides" of the state-court judgment. Instead, Petitioner requested a review of JPMC and the LSF9 Parties' actions prior to the state-court judgment and relief for the injury caused by their erroneous assertions of ownership interest in the Loan.

As stated above, so long as the state-court's judgment specifically is not being reviewed, a federal court is permitted to reach a conclusion contrary to that judgment, even if compliance with the federal court's judgment "would make it impossible" to comply with the state-court judgment.

The LSF9 Parties' arguments in this regard fail to recognize Rooker-

Feldman's limited application, likely because they conflate the four-part test with pre-Exxon Mobil analysis of this doctrine, where federal courts were able to broadly decline jurisdiction if the federal claims were "inextricably intertwined." However, the decision in *Exxon Mobil* recognizes that Rooker-Feldman is a doctrine with limited application.

In upholding the dismissal of the Adversary Complaint, the District Court essentially found that Petitioner was challenging the state-court foreclosure judgment, and thereby failed to recognize the legally-distinct pre-judgment injury caused by JPMC and LSF9 Trust's illegitimate assignments of the Loan.

A Court certainly has the authority and the ability to render a decision on the fraudulent conduct that pre-existed the state-court judgment and grant relief from that conduct. Further supporting this point is the fact, discussed in detail below, that the state-court judgment was issued effectively by way of a default, and did not consider the merits of JPMC and LSF9 Trust's asserted ownership of the Loan.

2. The claims are not barred by res judicata.

The doctrine of res judicata generally precludes parties from re-litigating claims or defenses that were available to them in a prior proceeding. See *Velasquez v. Franz*, 123 N.J. 498, 505 (1991). "The doctrine of res judicata 'contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to litigation.'" *Culver v. Ins. Co. of N. Am.*, 115 N.J. 451, 460 (1989) (quoting *Lubliner v. Bd. of Alcoholic Beverage Control,* 33 N.J. 428, 435 (1960)).

New Jersey and federal law apply res judicata if three requirements are met:

(1) "the judgment in the prior action must be valid, final, and on the merits"; (2) "the parties in the later action must be identical to or in privity with those in the prior action"; and (3) "the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one." *Hulmes v. Honda Motor Co.*, 924 F.Supp. 673, 682, n. 12 (D.N.J.1996) (citations omitted). Then, to determine whether the claim in the subsequent action arises from the same transaction or occurrence as the prior claim, New Jersey courts consider the following 4 factors:

> (1) whether the acts complained of and the demand for relief are the same (that is, whether the wrong for which redress is sought is the same in both actions) ... ; (2) whether the theory of recovery is the same; (3) whether the witnesses and documents necessary at trial are the same (that is, whether the same evidence necessary to maintain the second action would have been sufficient to support the first) ... ; and (4) whether the material facts alleged are the same.
> [*Culver, supra,* 115 N.J. at 461-62 (citations omitted)

Notwithstanding, this Court has recognized that the Bankruptcy Code contains an exception to the Full Faith and Credit statute in the context of the dischargeability of debts. See *Brown v. Felsen*, 442 U.S. 127, 135-36 (1979).

Writing for a unanimous Court, Justice Blackmun warned of the implicit dangers associated with applying res judicata in that context: "Because res judicata may govern grounds and defenses not previously litigated, however, it blockades unexplored paths that may lead to truth. For the sake of repose, res judicata shields the fraud and the cheat as well as the honest person. It therefore is to be invoked only after careful inquiry." Id. at 132. Justice Blackmun also recognized

that applying res judicata to bankruptcy proceedings may undercut Congress' intent to have bankruptcy courts resolve dischargeability issues. Id. at 134 (citations omitted).

The Court went on to reject the notion that res judicata applied to bankruptcy proceedings and held that "[t]he bankruptcy court is not confined to a review of the judgment and record in the prior state-court proceedings when considering the dischargeability of [a party's] debt." Id. at 138. In other words, pursuant to the Bankruptcy Code, bankruptcy courts have "exclusive jurisdiction" to determine the dischargeability of a debt. Brown, supra, 440 U.S. at 136-38. Therefore, a prepetition state-court judgment does not have a res judicata effect on a subsequent dischargeability proceeding in bankruptcy court.

Even still, for res judicata to apply, as stated in *Culver*, the clear standard requires that the prior case be adjudicated on the merits. While New Jersey courts have applied this preclusion to matters resulting default judgments, it is important to understand that most, if not all, default judgments are issued following the court's careful consideration of the proofs (i.e., at a proof hearing or on the papers). In fact, judges often deny default judgments based on flawed documentation and/or insufficient evidence.

In the context of foreclosures, though, an uncontested judgment is entered automatically upon recommendation by staff in the Superior Court Clerk's Office of Foreclosure (i.e., without any judicial review). Moreover, with the high-volume of foreclosure cases being processed by the office on a daily basis, there is little chance

that staff in that office give proofs the same level of scrutiny that a judge would. Effectively, all that review accomplishes is to check off boxes on a list of requirements (e.g., copy of the mortgage, copy of the note, certification of nonmilitary service, etc.). With no proof hearing held, and no judge actually examining the evidence proffered in support of judgment, an uncontested foreclosure judgment cannot, logically or equitably, be considered a judgment on the merits.

Here, dismissal of the Adversary Complaint based on res judicata fails under the factors set forth in *Hulmes* and *Culver*, as well as the analysis in *Brown*. First, looking at the three-part *Hulmes* test, the only requirement that is arguably met, is the second: the same parties in both actions. As proffered above, the foreclosure judgment was not on the merits--in fact the state court declined to hear the merits-and, most importantly, applying the factors set forth in *Culver*, the adversary proceeding does not arise out of the same transaction or occurrence as the state-court action.

Specifically: the "wrong" being redressed and theory of recovery in this action are entirely different; a trial in this case will require different documents and witness testimony than the state-court action; and the material facts alleged are clearly unalike.

3. The Bankruptcy Court Abused Its Discretion And Misapplied The Law In Dismissing The Proof of Claim Challenges Set Forth In The Adversary Complaint.

In dismissing the Adversary Complaint, the Bankruptcy Court also dismissed

my legitimate challenges to the POC filed by LSF9 Trust, based upon Rooker-Feldman and other principles. This was a clear abuse of discretion and, along with the District Court's affirmation of the dismissal, a patent failure to impose the Bankruptcy Court's exclusive jurisdiction over such disputes.

The allowance of claims in a bankruptcy proceeding is generally governed by 11 U.S.C. § 502, which provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects." 11. U.S.C. § 502(a).

Under Federal Bankruptcy Rules, an objection to the allowance of a claim must be in writing and filed at least 30 days prior to the hearing. Fed.R.Bankr.P. 3007. The Local Rules for the District of New Jersey state that "[a]n objection to the allowance of a claim must be brought by motion or adversary proceeding." D.N.J. LBR 3007-1.

If a party in interest objects, then pursuant to 11 U.S.C. § 502(b)(1), a claim will not be allowable if it is "unenforceable against the debtor, and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." Ibid.

To determine whether claims are enforceable for bankruptcy purposes, 11 U.S.C. § 502 relies upon non-bankruptcy law. See *In re Combustion Eng'g Inc.*, 391 F.3d 190, 245, n. 66 (3d Cir.2005) (citations omitted). As such, "[a] claim against the bankruptcy estate 'will not be allowed in a bankruptcy proceeding if the same claim would not be enforceable against the debtor outside of bankruptcy.'" Ibid.

(citations omitted). The ultimate effect of this statute "is to provide a bankruptcy trustee [or the debtor] with the same rights and defenses to claims as held by the debtor prior to bankruptcy." Ibid.

Petitioner's objections to the POC filed by the LSF9 Parties in this case were properly asserted through the Adversary Complaint and were not subject to any arguments regarding preclusion or other estoppel doctrines. Furthermore, the evidence brought to light in the context of the LSF9 Parties' motion demonstrates that there are critical deficiencies in the POC and, with the bar date for claims in the Bankruptcy Case having already passed, LSF9 Trust is bound by the POC that was filed.

As a result, Petitioner argued before the Bankruptcy Court that if the Adversary Complaint is dismissed without hearing my objection to the POC, it would deprive me of a statutory entitlement to have that objection heard and considered.

That precise issue has been examined by several federal courts throughout the country and it has been explicitly found that:

> Application of the Rooker-Feldman doctrine in bankruptcy is limited by the separate jurisdictional statutes that govern federal bankruptcy law. The Rooker-Feldman doctrine has little or no application to bankruptcy proceedings that invoke substantive rights under the Bankruptcy Code or that, by their nature, could arise only in the context of a federal bankruptcy case. In the exercise of federal bankruptcy power, bankruptcy courts may avoid state judgments in core bankruptcy proceedings ... , may modify judgments ... , and, of primary importance in this context, may discharge them ....

Sasson v. Sokoloff (In re Sasson), 424 F.3d 864, 871 (9th Cir.2005), cert. denied, 546

U.S. 1206 (2006)

In *Sasson,* the Ninth Circuit held that a bankruptcy court's judgment discharging a state-court judgment was a plain exercise of "its exclusive statutory power to determine whether a debt is dischargeable in a bankruptcy case"; which is a "core bankruptcy [proceeding] and [is] not subject to the Rooker-Feldman **doctrine**." Ibid. (citations omitted).

Here, dismissal of the Adversary Complaint's challenges to the POC deprived the Bankruptcy Court of its exclusive jurisdiction to determine the validity of the POC itself, as well as the resulting dischargeability of the debt. As discussed in Sasson, this core function of the Bankruptcy Court is not subject to Rooker-Feldman's limiting effects, *Sasson, supra,* 424 F.3d at 871; and, that finding clearly comports with the notion that doctrine occupies "narrow ground", limited to a "confined" class of cases. *Exxon Mobil, supra,* 544 U.S. at 284. The challenge to the POC must be allowed to proceed.

Conclusion

Based on the foregoing, certorari should be granted.

Dated: June 12. 2020

Respectfully submitted,

/s/ Robyn Jill Farrington