

No. 20-7258

In the Supreme Court of the United States

TOI HORN,

Petitioner,

v.

FEDERAL NATIONAL MORTGAGE ASSOCIATION
("FANNIE MAE"),

Respondent.

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

RESPONDENT'S OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

Respondent foreclosed on its mortgage and a third party was the successful bidder. Petitioner *pro se* filed a petition for bankruptcy relief after the foreclosure sale. Respondent moved for relief from the automatic stay in the bankruptcy court. Petitioner did not file a response to the motion for relief from the automatic stay. The bankruptcy court granted the motion and entered an order terminating the automatic stay. Petitioner appealed. The district court and Fourth Circuit affirmed the bankruptcy court's order terminating the stay. On appeal, Petitioner attempts to raise issues and challenge the foreclosure despite the fact that she did not raise these arguments (or any arguments at all) in the bankruptcy court. Contrary to the questions listed by Petitioner, the only question presented is:

1. Did the United States Court of Appeals for the Fourth Circuit correctly affirm the district court's orders: (a) affirming the bankruptcy court's order lifting the automatic stay; and (b) denying Petitioner's motion to alter or amend the judgment dismissing her appeal.

LIST OF PARTIES TO THE PROCEEDING

Respondent disagrees with Petitioner's list of parties to the proceeding for being inaccurate. This proceeding arises from a Motion for Relief from the Automatic Stay filed by Respondent in the Petitioner's Chapter 7 case in the United States Bankruptcy Court for the District of Maryland, case no. 18-15871. No party responded to the Motion. The bankruptcy court granted the Motion and entered the Order Terminating Automatic Stay. Only Petitioner appealed the Order. The parties to the proceeding are:

- (1) Toi Horn, as the Debtor in the Chapter 7 case; and
- (2) Federal National Mortgage Association, as the Movant for Relief from the Automatic Stay filed in the Chapter 7 case.

Contrary to Petitioner's assertions, the parties to the proceeding do not include Nationstar Mortgage, LLC, d/b/a Mr. Cooper, Tichi Property, LLC, or the Chapter 7 Trustee Steven Greenfeld.

CORPORATE DISCLOSURE STATEMENT

Federal National Mortgage Association, by counsel Orlans PC, pursuant to Rule 29.6, hereby submits the following disclosure:

1. Does Respondent have a parent corporation?

No.

2. Is there a parent or publicly held company that owns 10% or more of Respondent's stock?

No.

LIST OF PROCEEDINGS

Respondent adds the following proceeding to the list of proceedings set forth by Petitioner:

Petitioner's appeal of the Order of Ratification of Sale and Referral to the Court of Special Appeals of Maryland, case number is CSA-REG-1463-2020. Petitioner filed her Notice of Appeal on or about February 18, 2021. To date, appeal briefs have not been filed.

BASIS FOR JURISDICTION

Respondent concedes this Court has jurisdiction to review the ruling of the Fourth Circuit affirming the district court's rulings affirming the Order Terminating Automatic Stay and denying Petitioner's motion to alter or amend the judgment.

However, this Court lacks jurisdiction over Petitioner's arguments regarding the foreclosure. As stated earlier, this matter arises out of the Order Terminating Automatic Stay entered in Petitioner's bankruptcy case. The bankruptcy court has authority to hear and determine cases referred by the district court arising under title 11, and all core proceedings arising under title 11 or in a case under title 11. 28 U.S.C. §157(b).

The foreclosure proceeding, filed in state court, is not a case under title 11. At the time Petitioner commenced her bankruptcy case, the foreclosure sale had previously occurred. The bankruptcy court had no authority to undo the foreclosure sale. *In re De Souza*, 135 B.R. 793, 796 (Bankr. D. Md. 1991). Petitioner retained only a bare legal right to challenge the ratification of the sale. *Id.* Also, Petitioner never asked the bankruptcy court to determine the validity of the foreclosure as a core proceeding.

Even if Petitioner had made the request, the *Rooker-Feldman* doctrine would have barred the lower federal courts from ruling on the state court's orders entered in the foreclosure proceeding. *Rooker v. Fid. Trust. Co.*, 263 U.S. 413; 44 S. Ct. 149;

68 L. Ed. 362 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462; 103 S. Ct. 1303; 75 L. Ed. 2d 206 (1983); *Smalley v. Shapiro v. Burson, LLP*, 526 Fed. Appx. 231, 238 (4th Cir. 2013)(unpublished)(holding the district court lacked subject matter jurisdiction to consider the appellants' challenge to the judgement entered by the state court in the foreclosure proceeding). In addition, the bankruptcy court would have lacked jurisdiction to issue a final judgment over the third-party purchaser or the foreclosure proceedings in state court. *See Stern v. Marshall*, 564 U.S. 462, 464; 131 S. Ct. 2594; 180 L. Ed. 2d 475 (2011) (holding the bankruptcy court lacked constitutional authority under Article III to enter a final judgment on the debtor's counterclaim for tortious interference).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In this petition, there is no conflict among courts and there is no important legal question. Likewise, there is no erroneous factual findings or misapplications of the law.

Contrary to Petitioner's representations, there are no constitutional provisions involved in this appeal. The statute involved is the automatic stay statute of the Bankruptcy Code, 11 U.S.C. §362.

INTRODUCTION

This case presents no important or recurring questions of law or construction. Likewise, there is no conflict among courts and there is no important legal question. The ruling court made no erroneous factual findings or misapplications of the law. The lower court did not reach a decision in conflict with governing Supreme Court precedent. Rather, this appeal pertains to a garden variety Order Terminating Automatic Stay entered in a Chapter 7 case. This matter simply does not warrant this Court granting the petition for a writ certiorari.

STATEMENT OF THE CASE

The relevant facts are clearly documented in the record.

On March 28, 2018, a foreclosure sale was held regarding a Deed of Trust held by Respondent on real property commonly known as 10312 Garson Terrace, Lanham, Maryland, 20706. *See Trustee's Report of Sale* (Pet. App. 24a). A third party was the successful purchaser. *Id.*

On May 1, 2018, after the foreclosure sale, Petitioner *pro se* filed a petition for bankruptcy relief under Chapter 13. Petitioner converted the bankruptcy case to a case under Chapter 7 on August 8, 2018. The filing of the bankruptcy petition did not invalidate the foreclosure sale.

Respondent moved for relief from the automatic stay imposed by 11 U.S.C. §362(a) to permit Respondent to exercise its rights under non-bankruptcy law to ratify the foreclosure sale. Petitioner received notice of the Motion for Relief from the Automatic Stay but she did not file a response. The bankruptcy court properly granted the motion and entered the **Order Terminating Automatic Stay** (Pet. App. 19a) on December 20, 2018.

Petitioner appealed the Order Terminating Automatic Stay to the district court. Petitioner did not move to stay the Order Terminating Automatic Stay while the appeals were pending.

On the appeal from the Order Terminating the Automatic Stay, Petitioner raised arguments for the first time that she did not raise in the bankruptcy court, including an attempt to challenge the foreclosure sale. On September 27, 2019, the district court entered a **Memorandum Opinion and Order** (Pet. App. 13a-16a) stating Petitioner failed to designate a record on appeal and did not provide an intelligible basis for relief. Accordingly, the district court found the bankruptcy court's order terminating the stay was not an abuse of discretion and was supported by existing case law. *Id.*

On September 30, 2019, the bankruptcy court entered the **Order of Discharge** (Pet. App. 17a-18a) Doc. 168.

On October 17, 2019, Petition filed an Emergency Notice in the district court requesting a reversal of the **Memorandum Opinion and Order**. The district court treated the Emergency Notice as a motion for relief from judgment. Before the district court ruled on the motion, Petitioner appealed the **Memorandum Opinion and Order** to the Fourth Circuit.

On August 10, 2020, the Fourth Circuit issued a **Jurisdictional Notice** (Pet. App. 6a) stating the appeal will not proceed until the district court has issued its ruling on the motion for relief from judgment.

On August 14, 2020, the state court ratified the foreclosure sale. *See Order of Ratification of Sale and Referral to Auditor* (Pet. App. 22a.).

On August 28, 2020, the district court entered a **Letter Order** (Pet. App. 7a-9a) denying Petitioner's motion for relief from judgment. The district court found Petitioner had failed to meet any of the grounds to alter or amend the judgment, i.e. to accommodate an intervening change in controlling law; to consider new evidence not available at trial; or to correct a clear error of law or prevent manifest injustice. *Id.* Petitioner appealed the **Letter Order** to the Fourth Circuit.

On October 22, 2020, the Fourth Circuit entered a **per curiam Opinion** (Pet. App. 2a-3a) affirming the district court's order affirming the **Order Terminating Automatic Stay**, and affirming the district court's order denying Petitioner's motion to alter or amend the judgment. Petitioner asked the Fourth Circuit for rehearing.

On December 1, 2020, the Fourth Circuit entered an **Order** (Pet. App. 4a) denying the petition for rehearing.

On February 17, 2021, Petitioner filed this Petition for a Writ of Certiorari in this Court.

The next day, on February 18, 2021, Petitioner appealed the Order of Ratification of Sale and Referral to the Court of Special Appeals of Maryland, case number is CSA-REG-1463-2020. Appeal briefs have not yet been filed.

REASONS TO DENY THE PETITION FOR WRIT OF CERTIORARI

1. The automatic stay issue is moot.

Since entry of the Order Terminating Stay, the automatic stay was discontinued by operation of law under other provisions of the Bankruptcy Code. This appeal is now moot.

“It has long been settled that a federal court has no authority ‘to give opinions upon moot questions or abstract propositions, or to declare principals or rules of law which cannot affect the matter in issue in the case before it.’ For that reason, if an event occurs while a case is pending on appeal that makes it impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party, the appeal must be dismissed.” [*Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12; 113 S. Ct. 447; 121 L. Ed. 2d 313 (1992) (internal citations omitted)].

This appeal pertains solely to the Order Terminating Automatic Stay entered by the bankruptcy court. Under the Bankruptcy Code, the automatic stay as to property of the estate continues until such property is no longer property of the estate. 11 U.S.C. §362(c)(1). The automatic stay as to the debtor continues until the earliest of: (a) the time the case is closed; (b) the time the case is dismissed; or

(c) the time a discharge is granted to an individual Chapter 7 debtor. 11 U.S.C. §362(c)(2).

In this case, both §362(c)(1) and (c)(2)(C) apply. First, the automatic stay ended as to Petitioner because the bankruptcy court granted a discharge of Petitioner's debts. **Order of Discharge** (Pet. App. 17a-18a). Second, as discussed more fully below, both the legal and equitable rights to the Property transferred to the third-party purchaser once the state court ratified the foreclosure sale on August 14, 2020. **Order of Ratification of Sale and Referral to Auditor** (Pet. App. 22a.). Thus, the automatic stay as to the bankruptcy estate is no longer in effect because the Property is not property of the bankruptcy estate.

Even if this Court were to vacate the Order Terminating Automatic Stay, it would have no impact on the parties because the automatic stay is terminated as to both the bankruptcy estate and Petitioner by operation of law under §362(c). Accordingly, this appeal should be dismissed as it is based solely on a moot question.

2. The bankruptcy court did not abuse its discretion in entering the Order Terminating Automatic Stay.

The decision whether to grant relief from the automatic stay under 11 U.S.C. §362 is within the bankruptcy court's discretion and may be overturned on appeal only for abuse of discretion. *In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992).

In her petition, Petitioner does not address the Motion for Relief from the Automatic Stay, her failure to respond to the Motion, or the Order Terminating the

Automatic Stay. More importantly, Petitioner fails to argue that the bankruptcy court abused its discretion in granting the Motion.

The case of *In re De Souza*, 135 B.R. 793 (Bankr. D. Md. 1991) is directly on point. In *De Souza*, the creditor, who held a note secured by real property, was the successful bidder at a pre-petition foreclosure sale. The debtor filed a petition for bankruptcy relief before the sale was ratified by the state court under Maryland law. The creditor moved for relief from the automatic stay. The debtor opposed the motion. The bankruptcy court had to decide “at what time must a debtor file a bankruptcy case to nullify a foreclosure sale.” *Id.* at 794.

The *De Souza* court held that, pursuant to Maryland law, after a foreclosure sale the purchaser at the sale has an equitable interest in the land commensurate with that conveyed by the mortgage deed, and the purchaser is entitled to legal title upon the final ratification of the sale and the payment of the purchase money. Although the sale is incomplete until ratified by the court, once the legal title vests in the purchaser the deed is retroactively effective from the day of the sale. “It follows that, after the day of sale, the mortgagor’s equity of redemption generally ceases to exist as an interest in land.” *Id.* at 795. Thus, as of the petition date, the debtor had only a bare legal title, and the right to object at the ratification of the sale. “[T]he bankruptcy court has no power to undo a prefilings foreclosure sale and restore the equitable title to the legal title holder.” *Id.* at 796, (quoting *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (1979)). For

these reasons, the court found cause existed to lift the stay to reunite the legal and equitable title in the hands of the foreclosure purchaser.

The reasoning employed in *In re De Souza* applies in the instant case. As of the date the bankruptcy petition was filed, the third party purchaser, not Petitioner, had equitable title to the Property pursuant to Maryland law. The filing of her bankruptcy petition did not invalidate the foreclosure sale. Respondent properly sought relief from stay to pursue its rights under non-bankruptcy law, including the right to obtain ratification of the sale. No one opposed the Motion for Relief from Stay. Far from an abuse of discretion in granting the Order Terminating the Stay, the court was bound to grant it even had it been opposed.

Subsequently, the state court ratified the sale. Petitioner no longer has even the bare legal title to the Property, the scintilla of an interest that awarded the protection of § 362(a). The third-party purchaser holds both the equitable and legal title to the Property.

3. Petitioner failed to preserve the issues on appeal.

Petitioner raises issues which are unclear, confusing, and irrelevant. This Court should refuse to consider these issues for two important reasons. First, Petitioner did not raise these issues in the bankruptcy court. Absent exceptional circumstances, an appellate court does not consider issues raised for the first time on appeal. *Springfield v. Kibbe*, 480 U.S. 257, 259; 107 S. Ct. 1114; 94 L. 3d. 2d 293 (1987)(“We ordinarily will not decide questions not raised or litigated in the lower courts.”); *Volvo Constr. Equip. N. Am., Inc. v. CLM Equip. Co.*, 386 F.3d 581, 603

(4th Cir. 2004). Such issues are considered on appeal “only when the failure to do so would result in a miscarriage of justice.” *Volvo, supra*.

In this case, no exceptional circumstances exist that warrant this Court to consider the issues Petitioner raises for the first time on appeal. Respondent foreclosed on its mortgage before Petitioner filed her bankruptcy petition. Respondent properly obtained and rightfully relied on the Order Terminating Automatic Stay. Respondent proceeded in state court to have the foreclosure sale ratified. On August 14, 2020, the state court ratified the foreclosure sale. *See Order of Ratification of Sale and Referral to Auditor*, (Pet. App. 22a.). Once the sale was ratified, the third party purchaser obtained both legal and equitable title to the real property retroactively as of the day of the sale. *De Souza, supra* at 795.

It would be an injustice to Respondent as well as to the third party purchaser for this Court to consider Petitioner’s challenges to the foreclosure and mortgage. If this Court were to nullify the foreclosure sale it would divest the third-party purchaser of its legal and equitable rights to the Property, which would be an injustice since the third-party purchaser is not a party to this proceeding. *Iron Cliffs co. v. Negaunee Iron Co.*, 197 U.S. 463, 473; 25 S. Ct. 474; 49 L. Ed. 836 (1905) (“It is fundamental that no person can be deprived of property rights by any decree in a case wherein he is not a party.”)

Second, Petitioner makes a string of conclusory statements that are not sufficiently supported by any citations to the record or authorities. By failing to support her contentions with citations to the record or authorities, Petitioner waives

her arguments on appeal. *Projects Mgmt. v. DynCorp Int'l LLC*, 734 F.3d 366, 376 (4th Cir. 2013). Respondent cannot and should not be required to address arguments which are unintelligible.

4. The automatic stay issue does not warrant certiorari.

Rule 10 says a petition for a writ of certiorari will be granted only for compelling reasons such as: (a) a conflict among the United States courts of appeals; (b) a state court of last resort has decided an important federal question that conflicts with another court's decision, or (c) there is an important question of federal law that should be settled by this Court. In addition, Rule 10 says “[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”

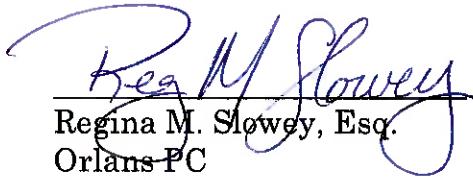
Again, there is no conflict among courts, there is no important legal question. There is no erroneous factual findings, nor misapplications of the law. This petition pertains to a garden variety Order Terminating Automatic Stay entered routinely and without timely objection in a Chapter 7 bankruptcy filing. This matter does not warrant this Court granting the petition for a writ certiorari.

CONCLUSION

Respondent requests that the petition for a writ of certiorari be denied.

Respectfully submitted:

Date: March 26, 2021


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