

No. 20-758

IN THE SUPREME COURT OF THE
UNITED STATES

Audie Jay Reynolds
Petitioner

v.

US Bank National Association
Respondents

On Petition for a Writ of Certiorari To The
Supreme Court of Arizona

PETITION FOR REHEARING

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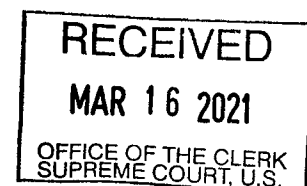


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INTRODUCTION

Audie Jay Reynolds Petitions for a Rehearing to review the February 22, 2021 decision to deny his Petition for a Writ Certiorari which asked this Court to resolve the issue of whether Arizona's Deed of Trust Scheme (the scheme) enacted in 1971, used as an alternative to the often-cumbersome mortgage and judicial foreclosure system. *See In re Krohn, 203 Ariz. 205, 208. P.3d 774, 777 (2002)*, as interpreted, provides good cause for removal of one or more of its provisions under Severability. The grounds here, are additional reasons for granting the Petition and substantial when considering the issue. Arizona's notion as a matter of course, that corporate appointed trustee assistant signatory's are "duly appointed" is simply biased and another provision in the Arizona Deed of Trust Scheme adding to the convergence of these statutory provisions which work together to produce a constitutional violation.

PETITION FOR REHEARING

The Appellant court's judgment affirming Petitioner guilty of forcible detainer and awarding U.S. Bank National Association, as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2006-NC2 ("US Bank(s)") immediate and exclusive possession of his home in Overgaard, and must be reviewed by this court. The Court held Reynolds offered no basis to overcome the presumption inherent to all recorded trustee's deeds in that the trustee's sale comported with statutory requirements, *see* A.R.S. § 33-811(B), and therefore waiver of all claims to title *see* A.R.S. § 33-811(C). *see* A.R.S. § 33-811(B), A.R.S. § 33-811(C); *BT Capital, LLC v. TD Serv. Co. of Ariz.*, 229 Ariz. 299, 301, ¶ 11 (2012). Specifically...

"Reynolds urges that defects in the trustee's sale render the trustee's deed invalid and thus undermine US Bank's asserted right to possession. But the merits of US Bank's title are beyond the

scope of an FED action. *See* A.R.S. § 12-1177(A) (“[In an FED action], the only issue shall be the right of actual possession and the merits of title shall not be inquired into.”); *see also Curtis v. Morris*, 186 Ariz. 534, 534 (1996). The only issue was the right of possession, and as described above, US Bank had the right of possession under the trustee’s deed. ¶7 Any challenge to the trustee’s sale—such as Reynolds’s claim that the successor trustee was not authorized to act as a trustee under Arizona law—must be pursued before the sale has been completed; the trustor may not challenge the completed sale based on pre-sale objections. *See* A.R.S. § 33-811(C); *BT Capital, LLC v. TD Serv. Co. of Ariz.*, 229 Ariz. 299, 301, ¶ 11 (2012). “

However, the issue here which Petitioner has not previously raised is the portion of the Courts holding which is particularly brazen regarding the only signatory on U.S. Banks trustees deed, an individual located in Georgia namely, “C. Scott, Trustee Sale Assistant.” The Appellate Court determined this individual to be an acceptable signatory since he is

simply the trustee sale assistant for Western Progressive Inc, although all of its stock owned by Premium Title Agency, Inc. which is an escrow agent in Arizona. As stated by the Court...

“Reynolds’s challenge to the successor trustee is factually flawed. He notes that the trustee’s deed is signed by “C. Scott ‘Trustee Sale Assistant’” and argues that “Assistant Trustees” are not qualified to conduct trustee’s sale under Arizona law. But the trustee was “Western Progressive – Arizona, Inc.,” not “C. Scott.” *See also Reynolds*, 719 Fed. Appx. 673. “C. Scott” did not substitute as trustee, but rather was a “duly-authorized” agent signing on behalf of the corporate successor trustee. *See Samaritan Found. v. Goodfarb*, 176 Ariz. 497, 502 (1993) (noting that a corporation “can only act through its agents”); *Best Choice Fund, LLC v. Low & Childers, P.C.*, 228 Ariz. 502, 510, ¶ 26 (App. 2011) (as amended)”

REASONS FOR GRANTING THIS PETITION

This Court has specifically held that a constitutional injury arises as a result of two or more statutory provisions operating together. *See, Seila Law LLC v. Consumer Financial Protection Bureau, March, 2020* citing, *Free Enterprise Fund, supra*, at 509 (stating that the convergence of “a number of statutory provisions” produce a constitutional violation). The provision requiring “good-cause removal is only one of [the] statutory provisions that, working together, produce a constitutional violation.”

Arizona Revised Statute (ARS) § 33-803 (C) is clear... “a trustee of a trust deed who qualifies under subsection A shall not lend or delegate the trustees name or corporate capacity to any individual or entity that does not qualify as trustee of a trust deed. An individual, company, association or corporation shall not circumvent the requirements of subsection A by acting in concert with a nonqualifying trustee”

U.S. Banks trustees deed states its trustee is “Western Progressive Trustee – Arizona Inc.” and that the “*trustee’s capacity as a corporation all the stock of which is owned by Premium Title Agency, Inc. an escrow agent in the state of Arizona.*” This corporate trustee is that of a Georgia based business with the same address as Altisource and Premium Title, incorporated in Delaware with the only Arizona address is that of its statutory agent. Circumvention accurately describes the behavior of Altisource and its agents here. In addition, A.R.S. § 33–807(A) provides, in relevant part, that “[B]y virtue of his position, a power of sale is conferred upon the trustee of a trust deed...” (Emphasis added.) This language, on its face, suggests that only the “true,” legally authorized trustee may, by virtue of his “position,” exercise the power of sale. *New Sun Bus. Park, LLC v. Yuma Cnty.*, 221 Ariz. 43, 46, ¶ 12, 209 P.3d 179, 182 (App.2009) (citing *Nordstrom, Inc. v. Maricopa Cnty.*, 207 Ariz. 553,

556, ¶ 10, 88 P.3d 1165, 1168 (App.2004)) (“When determining the meaning of a statute, we first look to the plain language of the statute as the most reliable indicator of its meaning.”). *Steinberger v. McVey*, 234 Ariz. 125, 318 P.3d 419, 679.

The appellant court offered *Samaritan Found. v. Goodfarb* “...when the client is a corporation, things become complex. The corporation is a fictional entity which has independent status under the law. But it can only act through its agents. Thus, the client, the corporate entity, and its agents, who are the only ones who can communicate, are separated.”

This separation is not appropriate in light of the scheme which strictly enforces a waiver of challenges in all forcible detainer hearings as well as affording these corporations a summary and speedy remedy for obtaining possession.

CONCLUSION

For the reasons set forth in this Petition, Audie Reynolds respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

Respectfully submitted the 10th day of March, 2021

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AUTHORITIES

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CERTIFICATION OF UNREPRESENTED PARTY

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully submitted, the 10th day of March, 2021

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