NO. _____

IN THE
Supreme Court of the United States

IQBAL S. RANDHAWA,

Petitioner,

v.

BANK OF NEW YORK MELLON, FKA Bank of New York, Successor to JPMorgan Chase Bank, NA, as trustee, on behalf of the holders of the Structured Asset Mortgage Investment II Inc., Bear Stearns Alt-A Trust, Mortgage Pass-Through Certificates, Series 2004-12,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 1968 Congress passed the Federal Consumer Credit Protection Act, Title 1, known as the Federal Truth-in-Lending Act, 15 U.S.C.A. §§ 1601 et seq., which provides consumer protections, including the right to serve a notice of rescission.

In *Jesinoski v. Countrywide Home Loans, Inc.* 574 U.S. 259 (2015), this court rejected a lower court's holding that under the Truth in Lending Act (TILA) a borrower has to file suit for rescission or be barred by a statute of limitations, and held that rescission is effected when the borrower notifies the creditor of his intention to rescind. No lawsuit is required to accomplish this.

The California Supreme Court has ruled since the 1800s that, in a Quiet Title action, statutes of limitations do not run against plaintiffs in possession of the property, and also that actions to remove a cloud from title have a four year statute of limitations.

Petitioner, owner of and residing on his property, in 2005 served a Notice of Rescission under TILA of transactions occurring in 2004. The Lender ignored it, taking no action to dispute the rescission, thus the rescission was effective and the Security Interest and related Instruments were void. The lender consequently foreclosed and conducted a trustee's sale. Randhawa remained in possession until he was later evicted in 2015. Randhawa filed this action in 2018, less than four years after eviction, and later sought to amend his complaint to allege Quiet Title to remove the cloud of the void security interest and trustee's deed and prior clouds on title. The District Court dismissed the action without leave to amend based on the three year statute of limitations for fraud which it found started running 20 days after the notice of rescission was served, without regard to possession of the property. The court of appeals affirmed, finding the claims time-barred.

The questions presented are:

1. Did court of appeals nullify this Court's decision in *Jesinoski* when it held that Petitioner was required to file suit, not for rescission or damages but to quiet title to remove void instruments from title, within three years of the original transaction?

2. Did the court of appeals err in not applying California law as to the applicable statute of limitations and their being tolled while Petitioner was in possession of the property?

PARTIES TO THE PROCEEDINGS

Petitioner Iqbal S. Randhawa was Plaintiff and Appellant below.

Respondents The Bank of New York Mellon f/k/a the Bank of New York, Successor to JP Morgan Chase Bank, Na, as Trustee, on Behalf of the Holders of the Structured Asset Mortgage Investment II Inc., were Defendant and Appellee below.

RULE 29.6 DISCLOSURE

Petitioner makes the following disclosures: the party is not a subsidiary or affiliate of a publicly owned corporation.

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STATUTES

PETITION FOR A WRIT OF CERTIORARI

Petitioner Iqbal S. Randhawa respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this matter.

OPINIONS BELOW

The unreported decision of the court of appeals is reprinted in the Appendix (App.) at A1. The unreported district court's opinion is reprinted at App. A4.

JURISDICTION

The court of appeals entered its judgment on August 13, 2020, App. A1, and denied a petition for rehearing Sept. 29, 2020 App. A14 . This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Relevant provisions of the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* are reproduced at App. A15.

STATEMENT OF THE CASE

A. The Underlying Fraudulent Transaction

Iqbal Randhawa owned his residence in Fairfield, CA, and was in financial trouble due to the impact of the events of 9-11, 2001, on his travel industry business. He was approached by an individual who explained how he had the ability to "save" Randhawa from "losing his home" at a foreclosure sale, and solicited him to enter into an arrangement whereby Randhawa would stay in the house and get back on his feet financially by transferring the property to the solicitor's company for 60 days after which his company would transfer the property back to Randhawa. The solicitor claimed to be able to arrange financing to accomplish this. App. A19, A34 (proposed Amend. Cplt., para. 36 et seq.)

In 2004 Randhawa deeded his property to the solicitor's company, Princess Properties. Princess Properties then deeded to a third party, who had then executed deeds of trust to Sierra Pacific Mortgage Co., predecessor to Bank of New York Mellon. App. A19, A 34 (para. 40 et seq.)

On September 1, 2005, within the three-year limitation period set by Section 1635(f) of the Truth in Lending Act. 15 U.S.C. §§ 1601 *et seq.* ("TILA"), Mr. Randhawa exercised his right to rescind the transaction by serving written notice of rescission to respondents, and recording a notice of rescission pursuant to the California Civil Code. App. A19, A37 (para. 52. et seq.)

The lender foreclosed, a trustee's sale occurred, and the trustee's sale deed was recorded on April 17, 2015. App. A19, A39 (para. 58.) In May 2015 Mr. Randhawa was served with an unlawful detainer. *Id.* Prior to that, he had never received notice of the trustee's sale.

B. District Court Proceedings – Motion to Dismiss, and Request to File Amended Complaint

After unsuccessful state court litigation Mr. Randhawa filed this action in 2018. *See* Complaint, (Dkt. 1.) After BONY filed a motion to dismiss, Mr. Randhawa, incorrectly without leave of court, filed an amended complaint seeking Quiet Title. App. A19, A37. The amended Complaint was stricken by the Court. *See* Order (Dkt. 22). In his opposition to the Motion to Dismiss, (*See* Pltff's Opposition (Dkt. 23)), he alternatively requested permission to file the Amended Complaint. The proposed Amended Complaint alleges Quiet Title at App. A19, A41 (para 67 et seq.)

The District Court Magistrate entered Findings of Fact and Recommendations summarily recommending dismissal with prejudice. App. A4. The court noted that "Jesinoski neither addressed nor decided the distinct question whether there is an extra-textual source for a statute of limitations applicable to suits seeking the equitable enforce of rescission." *Id.* Further, finding that leave to amend will be futile, it found that "[t]here are no additional facts or alternative

theories that could be added to the Complaint to make the TILA claims timely." It did not address the fact that the proposed quiet title cause of action was not a TILA claim. *Id.*

These Findings were adopted in full by the District Court Judge, the motion to dismiss granted, and the case dismissed with prejudice. App. A12.

C. The Court of Appeals

On appeal a three-judge Ninth Circuit panel affirmed the district court. It found that the same logic that foreclosed his TILA claims applied here. It said that the quiet title claim in Randhawa's proposed amended complaint is premised on the alleged fraud that led him to transfer his deed in 2004. In California, the statute of limitations for fraud is three years, thus the quiet title was found to be time-barred. App. A1. A Motion for Rehearing was filed and denied. App. A14.

REASONS WHY CERTIORARI IS WARRANTED

Under this Court's controlling authority the Ninth Circuit could not require suit to effect rescission, but the lower court did require suit to effect rescission. The court should not ignore the difference between a rescission lawsuit and a quiet title action to remove void instruments from the chain of title, but it did ignore the difference. The Ninth Circuit was not free to ignore a century of California law regarding statutes of limitations in quiet title actions, but it did ignore bedrock state law. Indeed, the District court's opinion itself misses the point that a quiet title action is not an action for rescission. It stated:

"Jesinoski neither addressed nor decided the distinct question whether there is an extra-textual source for a statute of limitations applicable to suits seeking the equitable enforce of rescission.(sic.)"

Mr. Randhawa was entitled to amend his complaint to add a cause of action for quiet title to remove the clouds created by void instruments.

I. The Ninth Circuit Disregarded this Courts Rule That a TILA Rescission is Effective on Notice

A. Jesinoski Established that a TILA Rescission is Effective Immediately on Notice

In 1968 Congress passed the Federal Consumer Credit Protection Act, Title 1, known as the Federal Truth-in-Lending Act, 15 U.S.C.A. §§ 1601 et seq., which provides consumer protections, including the ability to serve a notice of rescission in certain circumstances.

The courts of appeal were divided on when rescission was effected when this Court stated that TILA Section 1635(a) "… leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind." *Jesinoski v. Countrywide Home Loans, Inc.* 574 U.S. 259, 262 (2015). It then becomes the lender's burden to take action. The next steps in Section 1635(b)'s default procedures do not require a court proceeding. The statute specifies that, "[w]ithin 20 days after receipt of a notice of rescission, the creditor shall return" any "money or property given as earnest money, downpayment, or otherwise" and "shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction." *Ibid.* App. A15. The provision specifies that those procedures of Section 1635(b) are triggered by "receipt of notice of rescission," not by a lawsuit.

As summarized by a District Court:

> After [the lender] received plaintiff's notice of rescission, it had two options. It could have begun the unwinding process by returning plaintiff's down payment or earnest money and taking action to "reflect the termination of [the] security interest," pursuant to 15 U.S.C. § 1635(b). … In the alternative, [the lender] could have filed a lawsuit to dispute plaintiff's right to rescind the loan… The question here is what happens when the unwinding process is not completed and neither party files suit within the TILA statute of limitations. In such circumstances, *Jesinoski* directs that the rescission and voiding of the security interest are effective as a matter of law as of the date of the notice. *Paatalo v. JP Morgan Chase Bank,* 146 F. Supp. 3d 1239 at 1245 (D. Or. 2015).

This court noted in *Jesinoski* that rescission traditionally required either that the rescinding party return what he received before a rescission could be effected (rescission at law), or else that a court affirmatively decree rescission (rescission in equity). Under TILA, tender was not required, as in this case statutory law modified common-law practice. *Jesinoski v. Countrywide Home Loans, Inc.* 574 .U.S. 259, 264 (2015). Here, the lender ignored the notice and took no action; it did not respond, unwind the loan, nor filed suit. The deed of trust became void. Thus, Randhawa was not required to bring an action in equity to rescind; he had already accomplished this by his rescission at law. Rescission occurred without court order. Nonetheless, the Ninth Circuit conjured up the idea that Randhawa's quiet title action was a TILA rescission lawsuit, though the case law provides no support for such a radical conclusion. The court then leapt to the conclusion that petitioner was required to file suit to effect rescission. It found that the quiet title claim in Randhawa's proposed amended complaint was premised on the alleged fraud that led him to transfer his deed in 2004; "In California, the statute of limitations for fraud is three years (citations omitted), and Randhawa's claim is thus time-barred." App. A1.

The lower court erred. The premise of the quiet title was that rescission that had occurred and the security interest was rendered void.

B. As the Ninth Circuit's Opinion Underscores, Courts are Confused As To What Effect An Unadjudicated TILA Rescission Has.

15 U.S.C.A. §§ 1635, regarding rescission, provides in pertinent part that:

"When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, *becomes void* upon such a rescission." 15 U.S.C.A. § 1635 (emphasis added.) App. A15.

Mr. Randhawa served a notice of rescission within the TILA timelines and the lender did nothing – did not file suit nor address any challenge to the notice. The deed of trust securing the loan, and the trustee's deed, were rendered void years ago and remain a cloud on title. Yet the opinion below did not address the already void security interest, instead treating the proposed amendment to make a claim to quiet title as a TILA rescission lawsuit.

Several circuits have outstanding precedent (pre-*Jesinoski*) that also require further action after rescission--

The First Circuit stated that that "…the security interest becomes void when the obligor exercises a right to rescind that is available in the particular case, either because the creditor acknowledges that the right of rescission is available, or because the appropriate decision maker has so determined." *Large v. Conseco Finance Servicing Corp.* 292 F.3d 49, 54–55 (1st Cir. 2002) Both the Fourth and Tenth Circuits relied on *Large* in reaching the same conclusion, all relying on court

intervention to effect rescission. The Eleventh Circuit concluded that rescission is "automatic" *but* held that the voiding of a security interest may be judicially conditioned on borrower's tender of amount due, again requiring court intervention contrary to the rule in *Jesinoski. Williams v. Homestake Mortg. Co.,* 968 F.2d 1137, 1140–42 (11th Cir.1992) The Fourth declined to adopt the reasoning of the Eleventh in W*illiams* espousing the minority position that rescission is automatic. *Am. Mortg. Network, Inc. v. Shelton,* 486 F.3d 815, 821 (4th Cir.2007). The Tenth Circuit likewise adopted this majority approach requiring court adjudication. *Sanders v. Mountain America Credit Union* (10th Cir. 2015) 621 Fed.Appx. 520, 525.

The Eighth Circuit, after *Jesinoski*, acknowledged that that a borrower exercises his right of rescission by notifying the creditor of his intention to rescind, whether or not the borrower has filed an action in court. *Beukes v. GMAC Mortgage, LLC*, 786 F.3d 649, 652 (8th Cir. 2015)

This Court has not expressly addressed voiding the security interest as provided by 15 U.S.C.A. § 1635 in the context of *Jesinoski*. Given the varying approaches courts have taken in addressing the post-rescission-notice plaintiffs, this Court must grant review to provide guidance on this fundamental, recurring issue. Moreover, as we discuss, applying California law in this case compels the conclusion that petitioner's Quiet Title cause of action was not barred.

II. The Lower Court Erred In Ignoring Over a Century of State Law Precedent That the Statute of Limitations Does Not Run Against a Plaintiff in Possession of Real Property.

Even if the decision below may be harmonized with *Jesinoski,* it is a bedrock principle of the California Supreme Court regarding real property actions including quiet title that statutes of limitations do not run against the Plaintiff in possession. The lower court should have followed this precedent. Instead, with no support in the caselaw, the court elected to blaze its own path maintaining that, in a quiet title action, possession means nothing. It erred in doing so.

In *Smith v. Matthews* 81 Cal. 120 (1889) the court held that the right to quiet title cannot be time-barred while the plaintiff remains in possession. Here, plaintiff's predecessor attempted to convey land but the deed description included more land than they parties had intended. The Seller and then plaintiff remained in possession as the Buyer and later the defendant never took possession. The Seller brought an action to quiet title. The Court stated:

> The right of the plaintiffs to have their title to the land quieted, as against a claim asserted by the defendant under this deed, was not barred, and could not be while the plaintiffs and their grantors *remained in the actual possession of the land,* claiming to be the owners thereof, and the actual owners, as against the defendant, of all interest therein except the mere naked title. *Id.* at 121 (emphasis added.)

The *Smith* court relied on an earlier decision where the plaintiff's sought specific performance of an oral agreement to convey real property. *Day v. Cohn,* 65 Cal. 508 (1884) The buyer took possession and made payments to the vendor. The

vendor conveyed the property and the new owner refused to accept payments. *Id.* at 509. The court held that as the plaintiff remained at all times in possession of the property, his equitable right to compel performance was not barred by the statute of limitations. *Id.* at 512.

The possession rule was further described in *Muktarian v. Barmby* , 63 Cal.2d 558 (Cal. Sup Ct. 1965). Yet the District Court ignored the possession rule and absurdly relied on *Muktarian* for the premise that the appropriate statute of limitation was that for fraud, while ignoring that *Muktarian* maintains and supports the possession rule. The *Muktarian* defendant in a quiet title action claimed the plaintiff was barred by the statute of limitations for fraud or mistake. *Id.* at 559. The plaintiff had remained in possession. *Id.* at 560. The court held that "…no statute of limitations runs against a plaintiff seeking to quiet title while he possesses the property. *Id.* at 561. It further elaborated that even if the plaintiff *is aware of an adverse claim*, the statute of limitations does not run until such claim is pressed against him. (*Id.* at 560-561, emph. added.)

Likewise Petitioner, who remained in possession until the Judgment in the Unlawful Detainer action was served on him May 18, 2015. Yet the District Court concluded that statutes of limitation began to run from the time Mr. Randhawa served the notice of Rescission in 2005, and his proposed amended complaint would be time-barred. App. A4, A8-A10. The Ninth Circuit found that the "quiet title claim in Randhawa's proposed amended complaint is premised on

the alleged fraud that led him to transfer his deed in 2004. In California, the statute of limitations for fraud is three years, thus his claim was time barred." App. A1.

The Ninth Circuit revealed its mistaken logic in stating that "as the district court noted, the same logic that forecloses his TILA claims applies here…" The court started the running of the statute of limitations for quiet title from either the time of the consumer transaction or the notice of rescission, all while petitioner was in possession of the property, and tacitly stating that rescission was not effected without filing suit. The lower court had no grounds to disregard the California possession rule, and it erred in doing so.

III. The Lower Court Erred In Disregarding Over a Century of State Court Precedent that a Quiet Title Action to Remove Clouds on Title Are Not Governed by Statutes of Limitation for Fraud.

Again, the lower court should have followed controlling State Court precedent which provides that statutes of limitations for fraud do not govern actions to remove clouds from title. It erred in not doing so.

The purpose of a quiet title action is to establish title against adverse claims to real property or any interest in the property. If a title against which relief is prayed as a cloud is of such a character that if put in evidence it would drive the other party to the production of his own title in defense, it constitutes a cloud. *Lick v. Ray* 43 Cal. 83, 88. (1872)

In 1867 the California Supreme Court described another bedrock principal, holding that an action to remove a cloud on title tainted by fraud is not governed by the statute of limitations for fraud. *Stewart v. Thompson* 32 Cal. 260 (1867) A creditor executed on a judgment obtaining a sheriff's deed to the subject property, and then sold the property to the plaintiff. Prior to this the debtor has conveyed title in fraud as to his creditors. Plaintiff sued to quiet title, claiming that the debtor's deed was fraudulent, and a cloud on title; defendant claimed that plaintiff was barred by the three year statute of limitations for fraud. *Id.* at 260-261. The court found that the action was to set aside the conveyances as clouds on title. "The *gravamen* of the action is that the conveyances of which complaint is made, are clouds upon the title, and for that reason, and that only, their cancellation is asked." Id. at 263 (emphasis added.) The limitation of three years did not apply. The right of plaintiff to relief did not depend on whether the deeds were tainted with fraud, but upon the fact that they are clouds on title.

Actions for recovery of land acquired by fraud are not governed by statutes of limitation for fraud. In *Goodnow v. Parker* 112 Cal. 437 (1896) the court held that in a quiet title to correct a mistaken legal description based on an unsurveyed United States grant, the statute of limitations for fraud and mistake did not apply – rather, the limitation for recovery of property did. In this case a partition deed intended to grant equal acreage included land outside of that owned by the parties. On discovering the mistake the owners had a new survey marked on the ground but they did not correct the partition deeds. Thus one party had more acres than the

other. (Id. at 439-440). Plaintiff's action was to compel conveyance of property up to the corrected division line, and to quiet title thereto. (*Id.* at 437-438) The defendant and appellant argued that the claim was barred by the statute of limitations for fraud.

The court found that this was an action for recovery of land, and that correction of the mistake in the deeds is merely incidental to that action. (*Id.* at 442.) Thus, the limitation for actions for the recovery of property applied, not from the discovery of the mistake, but from the time plaintiff lost possession. (*Id.* at 443,)

The California Supreme Court fortified this rule by holding that an action to cancel a state land patent acquired by fraud is an action for recovery of property, not governed by the statute of limitations for fraud. *People v. Kings County Development Co.* 177 Cal. 529 (1918) A person bought land from the state, falsely claiming it was for her own use. She subsequently sold it to defendant. (*Id.* at 331-332.) The State learned of the fraud and sought to cancel the patent. (*Id.* at 534.) The court found that, although the count was based on the alleged fraud, it was not exclusively an action for relief on the ground of fraud. Its main purpose was to obtain for the state a cancellation of the patent.[1] "It is clearly an action in respect to land, as well as an action for land, and it is governed by the provisions of … [the California Code of Civil Procedure governing state actions to recover real property]."

[1] Similar to Petitioner's proposed Quiet Title claim whose main purpose was to obtain cancellation of void instruments.

This principle was elaborated on in *Newport v. Hutton*, 195 Cal.132 (1924) This decision involved an elaborate fraud to allow property taxes to become delinquent resulting in a tax sale. A straw man bought at the tax sale, and quieted title in his own name. (*Id.* at 139-141.) While fraud and collusion caused this Judgment of Quiet Title, the fraud and collusion are not what mattered. The gravamen of the action is that the Judgment clouded plaintiff's title. Thus, fraud was not controlling, and the case was not governed by statute of limitations for fraud .

> While fraud and collusion in its procurement are alleged, the right of the plaintiffs to relief is not made to depend altogether upon the question whether or not the judgment was so tainted; but the gravamen of the action is that the judgment is a cloud upon their title, for which reason its cancellation is asked. Hence the fraud and collusion alleged are not controlling when we come to assign the action to its proper class under the statute of limitations. If they exist, they are merely features in the case, and do not serve as a test of the true nature of the cause of action within the meaning of the statute. It is therefore evident that the case does not fall within the bar of three years [for actions for relief on the grounds of fraud] (Id. at 144.)

Here, Mr. Randhawa's transactions had their inception in fraud. The creditor did not object to the rescission, and the deed of trust securing the creditor's loan became void – it was no longer a lien on title. Based on the void deed of trust, the creditor foreclosed, issuing a trustee's deed to the property. The deed of trust and trustee's deed are void and cloud the title. The gravamen of the proposed amended complaint is that conveyances were clouds on title to be cancelled.

Plaintiff's rights were not dependent on fraud, but that the instruments were clouds.

The task of the lower court was to follow state law and consider the gravamen of petitioner's proposed amendment to the complaint. It erred in not doing so.

IV. CONCLUSION

The Ninth Circuit disregarded this Court's rule, the difference between actions for rescission and for quiet title, and a century of state law precedent. That disregard warrants this Court's intervention. The decision warrants summary reversal.

Respectfully submitted,

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