In the Supreme Court of the United States

No. 20-909

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, Mortgage Pass-Through
Certificates, Series 2004-12,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

Jon D. Pels, *Counsel of Record*
Maria Leonard Olsen
THE PELS LAW FIRM
4845 Rugby Avenue, 3rd Floor, Bethesda, MD 20814
(301) 986-5570 | jpels@pelslaw.com

Attorneys for Petitioner | Iqbal S. Randhawa

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes :

Rules and Regulations:

Other Authorities:

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Petitioner, Iqbal S. Randhawa, respectfully petitions for rehearing of this case, in which his writ of certiorari was denied on March 1, 2021. This petition is filed within 25 days of the Court's denial of certiorari.

REASONS FOR GRANTING THE PETITION

Lower courts are failing to follow this Court's decision in *Jesinoski v. Countrywide Home Loans, Inc.,* 574 U.S. 259 (2015). There is much uncertainty regarding recission of loans that violate The Truth in Lending Act ("TILA"). Petitioner, like other homeowners, lost his home in violation of TILA. This case provides a strong vehicle to remedy these unlawful situations for homeowners nationwide and strengthen adherence to the law designed to protect consumers from lenders' legally deficient actions.

Mr. Randhawa was duped by an unscrupulous lender. Within the three year limitation period set by TILA section 1635(f), Mr. Randhawa exercised his right to rescind by serving written notice of rescission to Respondent, and recorded the notice of rescission pursuant to the California Civil Code. Regardless, the lender foreclosed and sold Mr. Randhawa's home while he

and his family were living in it. Mr. Randhawa never even received notice of the sale prior to being served with an unlawful detainer. The lender failed to follow post-rescission mandates. This deficiency and the illegal implications thereof were not raised in the Petition for Certiorari that the Court denied.

Mr. Randhawa tried to protect his home after the sale, by filing a lawsuit that was summarily dismissed with prejudice. The Ninth Circuit affirmed, wrongly holding that that the case was barred by California's statute of limitations for fraud. The Ninth Circuit ignored this Court's clear ruling that rescission was effective upon notice to the lender. The application of the fraud statute of limitations was erroneous. Mr. Randhawa lost his home despite law that should have protected him against the sale of his home by a lender that failed to follow the post-rescission statute.

I. The Ninth Circuit, Like Other Circuits, Disregarded this Court's Ruling that a TILA Recission is Effective on Notice.

A. Courts Are Wrongly Requiring Lawsuits for Homeowners to Enforce Their Rescissions

The Ninth Circuit ruled that the filing of a lawsuit was required to effect rescission. That is directly contrary to this Court's *Jesinoski* decision.

The district court missed the point: "*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)." The lender's security interest was void upon rescission, yet a subsequent sale of Mr. Randhawa's home by the lender was allowed. 15 U.S.C. § 1635 ("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.") (emphasis added). Since the lender's security interest was void, the lender should not have been allowed to sell the house from under the borrower.[1]

---

[1] If the consumer exercises the right to rescind, any security interest becomes void, and the consumer can no longer be held liable for the loan. 12 C.F.R. § 226.23(d)(1); *Jesinoski*, 574 U.S. 259 (2015). Within 20 days of the creditor's receipt of the rescission notice, the creditor must return any money or property given in connection with the transaction and take any action necessary to reflect termination of the security interest. 12 C.F.R. § 226.23(d)(2). Any challenge to the rescission was necessary for the lender to make within 20 days of receipt of the rescission notice. 15 U.S.C. §1635(b). The lender in this case failed to follow TILA law.

The Tenth Circuit has also wrongly required court adjudication for a TILA rescission to be effective. *Sanders v. Mountain American Credit Union,* 621 Fed. Appx. 520, 525 (10th Cir. 2015) (court equitably reordered TILA rescission procedure to require proof of ability to tender, citing cases from the 1st, 7th, 9th and 11th Circuits holding that rescission does not void a security interest).

In addition, lower courts have struggled with applying the appropriate statute of limitations for a borrower's claim to enforce the notice of rescission. "The split in federal authority begs our supreme court to take up the question of the appropriate statute of limitation for claims arising under section 1635 of TILA." *U.S. Bank National Ass'n v. Miller,* 156 N.E.3d 1203,1210 (Ill. App. 2020) (citations omitted). The lower court in the case at bar relied on *Hoang v. Bank of America* and borrowed the state's limitations period. 910 F.3d 1096, 1099 (9th Cir. 2018). The court in *Miller* rejected this approach. 156 N.E.3d at 1211. Confusion among courts should be remedied.

B. The Lower Court Also Ignored State Law Regarding Suits to Quiet Title.

Under California law, it has long been held that statutes of limitations in actions to quiet title do not run against plaintiffs who are in possession of their property. *E.g., Muktarian v. Barmby,* 63

Cal.2d 558, 561 (Cal. Sup. Ct. 1965); *Smith v. Matthews,* 81 Cal. 120 (1889). Yet the lower court ignored this precedent and ruled that the statute of limitations for fraud barred Mr. Randhawa's suit to quiet title, even though Mr. Randhawa was in possession of his home. The court held that the fraud occurred when Mr. Randhawa transferred his deed to the unscrupulous lender. The court disregarded both the California possession law and this Court's *Jesinoski* ruling because it required the filing of a lawsuit in order for rescission to be effected.

The lower court also ignored state law precedent that provides that statutes of limitations for fraud do not govern actions to remove clouds from title. *E.g., Newport v. Hutton,* 195 Cal. 132, 144 (1924); *People v. Kings County Dev. Co.,* 177 Cal. 529, 534 (1918); *Goodnow v. Parker,* 112 Cal. 437, 443 (1896); *Stewart v. Thompson,* 32 Cal. 260, 263 (1867). The court in *Goodnow* held that the limitation for actions for the recovery of property applied, not from the discovery of the mistake, but from the time the plaintiff lost possession. 112 Cal. at 443. Similarly, though Mr. Randhawa's claim had its inception in the lender's fraud, the gravamen of his claim was to obtain the cancellation of void instruments and, thus, was wrongly dismissed.

II. This Court Should Resolve an Important Unsettled Issue Post-*Jesinoski*: Recourse

When a Consumer's Rescission is Effective as a Matter of Law Per *Jesinoski,* But the Lender Fails to Follow TILA's post-Rescission Mandates.

The mandated statutory sequence set forth in Section 1635(b) and Regulation Z direct that, "**within 20 calendar days after receipt of a notice of rescission**, the creditor **shall** return any money or property that has been given to anyone in connection with the transaction and **shall take any action necessary to reflect the termination of the security interest**." Reg. Z § 226.23(d) (2) (emphasis added). Rescission is automatic upon notice by the consumer. *Jesinoski,* 574 U.S. at 262 ("Section 1635(a) explains in unequivocal terms how the right to rescind is to be exercised: It provides that a borrower 'shall have the right to rescind…by notifying the creditor, in accordance with the regulations of the Board, of his intentions to do so.' The language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intentions to rescind.").[2] The *Jesinoski* holding rested on the Supreme Court's determination, as a matter of strict statutory interpretation, that written notice actually effects the rescission and

[2] If the lender disputes the validity of the rescission, it can bring suit to challenge it. Otherwise, TILA mandates a statutory procedure creditors must follow when a consumer rescinds pursuant to 15 U.S.C. § 1635(b).

that "[s]ection 1635(a) nowhere suggests a distinction between disputed and undisputed rescissions…." *Id.*

Per *Jesinoski,* rescission was "effected" by Mr. Randhawa's written notice to the lender that he intended to rescind. *Id.* Under TILA, Mr. Randhawa was required to do only one thing under section 1635(f) before the three-year period expired—exercise his right to rescind by providing written notice to the lender. 15 U.S.C. § 1635(a); Reg. Z § 226.23(a)(2). Mr. Randhawa lawfully effected his rescission.

The lower court erred by ignoring *Jesinoski* and deviating from TILA. TILA requires the lender, upon receiving a timely rescission notice, to take the unwinding steps TILA mandates, or challenge the TILA violations by filing suit within 20 days of receipt. 15 U.S.C. § 1635(b). The lower court's holding contradicts the creditor's obligations under section 1635(b)'s prescribed rescission mechanism. The lender's security interest was void post-rescission, and the lender failed to challenge rescission within the statutorily required time.

The receipt of Mr. Randhawa's rescission notice triggered a series of steps under TILA through which the transaction is unwound, and resolves the question regarding rescission at law

mechanics when any creditor receives a "notice of rescission." Section1635(b) states:

> When an obligor exercises his right to rescind under subsection (a) of this section, 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. Within 20 days after receipt of a notice of rescission, the creditor **shall** return to the obligor any money or property given as earnest money, down-payment, or otherwise, and **shall** take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. * * * The procedures prescribed by this subsection **shall** apply except when otherwise ordered by a court.

15 U.S.C. § 1635(b) (emphasis added). This statutory sequence and the language expressed is unambiguous and compliance is mandatory. *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) ("The use of the mandatory 'shall'…normally creates an obligation impervious to judicial discretion").

Rescission is the "ultimate consumer remedy," and Congress carefully set forth the duties regarding it. *Sosa v. Fite*, 498 F.2d 114, 118 (5th

Cir. 1974).[3] Where a creditor fails to comply with TILA's requisites, "it becomes amenable to the rather harsh legislative remedy which the Truth in Lending Act imposes upon errant creditors." *French v. Wilson*, 446 F. Supp. 216, 220 (D.R.I. 1978) ("if the creditor has delivered any property to the borrower, the borrower may retain possession of it until the creditor has fulfilled his statutory obligations").

Under TILA, any rescission dispute requires resolution by "placing all burdens on the creditor." *Williams v. Homestake Mortgage Co.*, 968 F.2d 1137, 1140 (11th Cir. 1992). When consumers such as Mr. Randhawa have a TILA right to rescind, "all that the consumer need do is notify the creditor of his intent to rescind. The agreement is then automatically rescinded." *Williams*, 968 F.2d at 1140; *Jesinoski*, 574 U.S. at 262; *Merritt v. Countrywide Financial Corp.*, 759 F.3d 1023, 1030 (9th Cir. 2014). "By reversing the traditional sequence for common law rescission claims, TILA 'shift[s] significant leverage to consumers,' consistent with the statute's general consumer protective goals." *Merritt,* 759 F.3d at 1030 (quoting Krivinskas Shepard, *It's All About the Principal:*

---

[3] A creditor's failure to comply with the requirements of section 1635 subjects it to actual and statutory damages, attorney's fees, and costs. 15 U.S.C. § 1640.

Preserving Consumers' Right of Rescission under the Truth in Lending Act, 89 N.C.L.Rev. 171, 188 (2010)).

Creditors lack the authority, via their inaction, to alter this mandatory 20-day statutory sequence. But this is precisely what the lender in this case did. The lender did not follow TILA to unwind the transaction, or legally challenge the rescission, but rather illegally sold Mr. Randhawa's home.

To resolve any dispute regarding whether there is a violation triggering rescission, or whether the creditor has a tenable defense, the creditor must seek guidance from the court within 20 days. *See Aquino v. Public Fin. Consumer Discount Co.*, 606 F. Supp. 504 (E.D. Pa. 1985); *Paatalo,* 146 F. Supp. 3d at 1245. The lender's failure to act within the statutorily prescribed time denies it standing to challenge the validity of a rescission. After 20 days, the creditors' interest in the property is "automatically negated regardless of its status and whether or not it was recorded or perfected." Official Staff Commentary 226.23(d)(1)-1.

Adopting a contrary interpretation of the plain words of 15 U.S.C. § 1635(b) would encourage lenders to ignore cancellation notices with impunity because there would be no liability for lenders who violate TILA. This would severely undermine the

self-effectuating system Congress established. The non-judicial rescission at law process established by Congress "creates incentives for creditors to rescind mortgages when faced with valid requests without forcing debtors to resort to the courts." *Belini v. Washington Mut. Bank, FA*, 412 F.3d 17, 25 (1st Cir. 2005).

The TILA rescission provision and this Court's opinion in *Jesinoski* render the note and mortgage void upon mailing of the rescission. A timely mailed rescission is effective by operation of law unless a court of competent jurisdiction vacates it. 15 U.S.C. §1635(b). It is the lender who must challenge the rescission within 20 days of the rescission notice, lest it be in violation of the three TILA rescission duties. 15 U.S.C. §1635(b).

One of the first courts to address *Jesinoski*'s implications found that the decision mandated non-dismissal of a borrower's rescission claim, even though foreclosure had occurred. *Paatalo v. JP Morgan Chase Bank,* 146 F. Supp. 3d 1239 (D. Or. 2015). The court in *Paatalo* correctly noted that "[a]s a practical consequence of [the *Jesinoski*] ruling, a lender now bears the burden of filing a lawsuit to contest the borrower's ability to rescind. Alexandra P. Everhart Sickler, *And the Truth Shall Set You Free: Explaining Judicial Hostility to the Truth in Lending Act's Right to Rescind a Mortgage Loan*, 12 Rutgers J.L. & Pub. Pol'y 463, 481

(Summer 2015)." *Id.* at 1245; *see Johnson-El v. JP Morgan Chase Bank National Asso.*, 2016 U.S. Dist. LEXIS 133466 (E.D. Mich. 2016) ("for the reasons noted in the *Paatalo* decision, the **lender's failure to fulfill its obligations and failure to bring a lawsuit seeking to adjudge the rescission void would render the rescission effective as a matter of law as of the date of the notice**, and **would void the lender's security interest in the property**") (emphasis added).

When a mortgage is properly rescinded, the law says that the note becomes void immediately. *Jesinoski,* 574 U.S. at 262; *Paatalo,* 146 F. Supp. 3d at 1245; *Johnson-El.* Nothing can "unvoid" it. Although the law is unambiguous, this case exemplifies why the effect of a TILA rescission still needs to be clarified. Void is not voidable. Yet many courts are loathe to enforce TILA properly, perhaps in anticipation of potential claims to quiet title, wrongful foreclosure suits and cancellation of instruments. Even though the result of TILA's proper application may cause difficulties for banks and purchasers of foreclosed upon houses, that is no reason to nullify TILA's directives. *Paatalo,* 146 F. Supp. 3d at 1245-46, 1247 ("Although foreclosing trustees and purchasers at trustee's sales have a significant interest in finality, consumers have a countervailing interest in avoiding wrongful foreclosure").

Jesinoski revealed that the majority of federal courts had "misinterpreted the will of the enacting Congress in allocating to borrowers the burden to go to court to enforce their statutory rescission rights under TILA." *Paatalo*, 146 F. Supp. at 1247. Courts are continuing to do so, post-*Jesinoski*, because the effect of the Court's holding remains unclear. *See, e.g., In re Kelley,* 545 B.R. 1, 12 n.5 (Bankr. N.D. Cal. Jan. 21, 2016) (*Jesinoski* "did not hold, as Debtor appears to contend, that a loan is rescinded on notice and borrowers have no further obligation to perform if the lender does not respond."); *In re Brown*, 538 B.R. 714, 718-19 (Bankr. E.D. Va. 2015) (court disregarded *Jesinoski* and the effect of a rescission notice pursuant thereto) 538 B.R. 714 (Bankr. E.D. Va. 2015), aff'd 2017 U.S. App. LEXIS 4622 (4th Cir. 2017), *cert. denied*, 2017 U.S. LEXIS 5653 (U.S. 2017); *In re Jensen-Edwards,* 535 B.R. 336, 347 (Bankr. D. Id. 2015) ("Jesinoski simply distinguishes the required timely notice of rescission from a deadline to file suit"). Legal analysts have opined that the *Jesinoski* decision "turned 40 years of TILA rescission jurisprudence into a scene which is now as clear as mud." Frank A. Hirsch Jr. and Richard A. McAvoy, *Life After Jesinoski: The New "Wild West" of TILA Rescission*, 18 Consumer Financial Services Law Report 4 (2015).

Courts are resisting the implications of the unanimous *Jesinoski* opinion holding and are making rulings that conflict with TILA and

Jesinoski. The Court should settle these conflicts in the application of federal consumer protection law, to assure self-enforcement and promote TILA compliance. Congress designed rescission as one of the TILA statute's punishments for predatory practices. Furtherance of this important public policy depends on the courts' uniform interpretation of the Congressional mandate.

III. Justice for Consumers Would Be Served by Eliminating the Uncertainty Rendered by Conflicting Lower Court TILA Decisions.

The borrowers, lenders and lower courts need clear guidance because the implications of leaving the law uncertain is dire. Consumers, like Mr. Randhawa, will lose their homes because of illegal lenders' practices.

The issues in Mr. Randhawa's petition are precisely the type that are confused in the lower courts. For this reason, rehearing is appropriate. TILA rescission law is not settled and multiple decisions are being rendered in contravention of the law. Consumers are wrongly losing their homes. This is a recurring issue that must be addressed in the interest of justice.

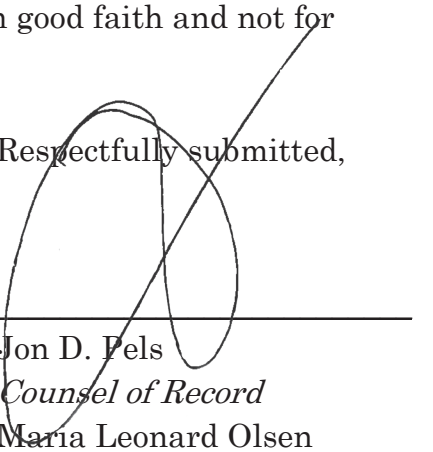
CONCLUSION

For the foregoing reasons, Mr. Randhawa respectfully requests that this Court grant the petition for rehearing and grant certiorari in this case.

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

Respectfully submitted,



Jon D. Pels
Counsel of Record
Maria Leonard Olsen
The Pels Law Firm, LLC
4845 Rugby Avenue
Third Floor
Bethesda, MD 20814
(301) 986-5570 phone
(301) 986-5571 fax
jpels@pelslaw.com
Counsel for Petitioner, Iqbal Randhawa