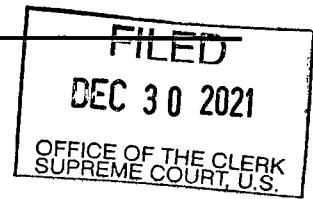


21 - 6830
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



HUY-YING CHEN,
Petitioner

vs.

JP MORGAN CHASE BANK, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF WASHINGTON

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted:

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(i)
QUESTION(S) PRESENTED

- (i) Whether the Supreme Court of Washington's denial of the petition for review is contrary to established precedent.
- (ii) Whether the inequitable nature of the erroneous denial of review, based on an expired judgment and Respondents' lack of standing, merits this Court's review.
- (iii) Whether a foreign judgment, originally entered in a federal Bankruptcy Court, can be upheld in the state courts upon expiration of the statute of limitations.
- (iv) Whether Petitioner's Fourteenth Amendment rights to due process were violated as his property interests were/are at stake.

(ii)

LIST OF PARTIES

Petitioner submits that all parties appear in the caption of the case on the cover page, and are listed below for the Court's reference:

Petitioner(s): Huy-Ying Chen

Respondent(s):

1. JP Morgan Chase Bank, as Trustee, f/k/a The Chase Manhattan Bank, successor in interest to Chase Manhattan Bank, N.A.
2. The Bank of New York Mellon Trust Company, National Association, f/k/a Bank of New York Trust Company, N.A., as successor to JP Morgan Chase Bank, N.A., as Trustee for Residential Asset Mortgage Products, Inc., mortgage asset-backed pass-through certificates series 2005 RP3
3. Paul D. Savitsky, as Vice President of JP Morgan Chase Bank, N.A. f/k/a JP Morgan Chase Bank
4. Steven K. Linkon, attorney of Routh Crabtree Olsen
5. Christopher Luhus, attorney of McCarthy & Holthus LLP
6. John Doe #1 and unknown parties

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APPENDIX “B”	Court of Appeals, State of Washington, Division One – Opinion Affirming the Superior Court’s Order denying Petitioner’s Motion to Set Aside Sheriff’s Sale and Deed to Real Property. Dated March 1, 2021.
APPENDIX “C”	King County Superior Court – Order Denying Petitioner’s Motion to Set Aside Sheriff’s Sale and Deed to Real Property.

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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 highest state court to review the merits appears at Appendix A to the petition.

JURISDICTION

The date on which the highest state court decided the merits of the case was March 1, 2021. A copy of that decision appears at Appendix B. A timely petition for rehearing was thereafter filed and denied.

Additionally, the Washington Supreme Court denied petitioner's Petition for Review on October 6, 2021 and appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

STATEMENT OF THE CASE

In or around 1999, Petitioner and his wife, Yueh Hua Chen (now deceased), borrowed \$525,000.00 from Washington Mutual Bank to purchase a home located at 5112 189th Avenue NE, Sammammish, WA 98074 (hereinafter referred to as the “subject property”). Petitioner duly paid his mortgage each month pursuant to the Mortgage. For Petitioner owned business loan purpose that The Bank of ChinaTrust paid off Petitioners’ Washington Mutual Bank mortgage loan that allow The Bank of ChinaTrust grant their first position for lien. With dispute that Petitioner filed for bankruptcy on March 19, 2007 due to Petitioner’s dispute of Petitioner business’s personal guarantee issued as part of the Pooling and Servicing Agreement (“PSA”), which demonstrates fraudulent and defective deed transfers on the subject property as described herein.

Petitioner has fought for years to retain possession of his home. At every stage, various Courts and Judicial Officers have neglected to, or failed to, give the proper weight to Petitioner’s evidence and arguments in defense of the foreclosure claims brought against him in furtherance of foreclosure. Fair and unbiased judicial adjudication is required in any Court of Law. The opportunity for fair and full proceedings has been denied Petitioner on numerous occasions. Dismissals have been entered, motions denied, etc., all in furtherance of Respondents’ judicial foreclosure action.

Brief Procedural History.

On April 18, 2008, the King County Superior Court received Respondents’ “Judgment Summary and Affidavit of Steven K. Linkon for Filing a Foreign

“Judgment from Bankruptcy Court” under Case No. 08-2-13281-1 SEA. Respondent Chase filed the foreign judgment in King County Superior Court on April 18, 2008. On October 2, 2008, the King County Sheriff received Respondent Chase’s writ for order of sale to foreclose on the subject property and return on January 2, 2009 without execution.

On October 20, 2016, the King County Sheriff received a new order of sale to foreclose on the subject property. On December 12, 2016, Petitioner filed a “Motion to Dismiss a Wrongful Judicial Foreclosure,” which was subsequently denied by the Superior Court. The sheriff’s sale took place on December 16, 2016. On January 12, 2017, the Superior Court overruled Petitioner’s objections to confirming the sale. On or about February 14, 2018, it is alleged that the Superior Court issued an order confirming the sale *nunc pro tunc* to February 10, 2017.

On June 5, 2019, Petitioner filed a lawsuit in the Superior Court against Respondents seeking to prevent enforcement of the Sheriff’s sale. Respondents moved to dismiss on res judicata and failure to state a claim basis. Petitioner also filed a motion to set aside the sale and vacate the deed. The Superior Court denied Petitioner’s motion. Petitioner timely appealed to the Court of Appeals- Division I.

On September 13, 2019, Petitioner filed a Notice of Appeal with the Court of Appeals- Division I under No. 80484-7-I. The Court of Appeals affirmed the lower court’s denial of Petitioner’s motion and affirmed the dismissal of the claims. An opinion to that effect was issued on March 1, 2021. Petitioner filed for reconsideration on March 18, 2021; said motion was denied on April 30, 2021.

Petitioner duly filed a Petition for Review with The Supreme Court of

Washington, under No. 99832-9. The Washington Supreme Court denied petitioner's Petition for Review on October 6, 2021, thus the instant petition for writ of certiorari falls into the 90-day statutory time frame and is timely before this Court.

REASONS FOR GRANTING THE PETITION

In its judgment refusing the petition for appeal, the Washington Supreme Court gave no detailed reasoning for its denial of Petitioner's petition for review. Instead, the Supreme Court simply stated that it is of "the opinion there is no reversible error in the judgment complained of." *See Appendix A.*

Petitioner successfully argued in his petition for review to the Washington Supreme Court that the affirmation of the order denying his motion to set aside the Sheriff Sale and Deed was entered in error by the Washington Court of Appeals. The Washington Supreme Court, in error, declined to consider Petitioner's arguments in ruling to deny review.

For the reasons below, review by the United States Supreme Court is warranted.

I. THE DECISION BELOW CONFLICTS WITH EXISTING CASELAW AND OTHER CIRCUIT AUTHORITY REGULATING THE CONFIRMATION OF A RESIDENTIAL FORECLOSURE SALE BASED ON AN EXPIRED JUDGMENT.

Judgments rendered by a Washington court are enforceable for a period of 10 years, unless the party obtains an extension. RCW 6.17.020(1), (3). A foreign judgment filed in a superior court shall be treated in the same manner as a judgment of the superior court. RCW 6.36.025(1). The COA states in the underlying Opinion that "The sale occurred on December 16, 2016, within the 10-year time limit...." This is a misapplication on the part of the COA because although the sale of the subject

property occurred on December 16, 2016, that does not mean the statutory requirements of a judicial foreclosure action were met by Respondents. On the contrary. A foreclosure sale becomes valid and complete only upon confirmation by the court. A bid at sheriff sale is merely an offer to purchase that does not become binding until confirmation. The Record on Appeal in this case demonstrates that there is no order of confirmation. All the Record reflects is a questionable *Ex Parte nunc pro tunc* order issued on February 14, 2018, which was entered after the original judgment lien ceased on November 29, 2017, and thus must be rendered void as a matter of law.

It is clear that the COA's Opinion conflicts with the opinion in *United States of America v. Tacoma Gravel and Supply Co., Inc., et al.*, 376 F.2d 343 (9th Cir. 1967). In interpreting this statute, the decisions of the Washington State Supreme Court are controlling. *In re Levinson*, 5 F.2d 75 (D.C.Wash.1925). That court has consistently held that this is a statute not of limitations but of extinguishment; after six years a Washington judgment has no further force or effect — it ceases to exist. *Bettman v. Cowley*, 19 Wash. 207, 53 P. 53, 40 L.R. A. 815 (1898); *Palmer v. Laberee*, 23 Wash. 409, 63 P. 216 (1900); *Ball v. Bussell*, 119 Wash. 206, 205 P. 423 (1922); *Roche v. McDonald*, 136 Wash. 322, 239 P. 1015, 44 A.L.R. 444 (1925), rev'd on other grounds, 275 U.S. 449, 48 S. Ct. 142, 72 L. Ed. 365 (1928); *St. Germain v. St. Germain*, 22 Wash. 2d 744, 157 P.2d 981 (1945). This statute is not a mere statute of limitations. *Roche v. McDonald*, *supra*, 136 Wash. at 326, 239 P. at 1016. It goes directly to the obligation of the judgment itself and destroys it." *Palmer v. Laberee*, *supra*, at 415, 63 P. at 218. Consequently, the "judgment becomes inoperative for any

purpose after the expiration" of six years. *Hinckley v. Seattle*, 37 Wash. 269, 270, 79 P. 779 (1905). In fact, the U.S. Ninth Circuit Court of Appeals convinced that this statute operates against the United States equally with private creditors. In *Custer v. McCutcheon*, 283 U.S. 514, 51 S. Ct. 530, 75 L. Ed. 1239 (1913), the Court had under consideration a state statute fixing a five-year limit on the time within which execution must issue on a judgment. The rationale implicit in the Court's opinion is that execution is a state granted right; a state can control by condition what it grants; the time element is a valid condition inherent in the right of execution; the right terminates upon expiration of the time so limited; this consequence attaches even though the judgment is in favor of the United States. The Court was careful to note that " [t]he time limited for issuing executions is, strictly speaking, not a statute of limitations." 283 U.S. at 519, 51 S. Ct. at 532. Rather the lapse of more than five years from the date of entry of the judgment served to extinguish the government's right to execution altogether. "So here the United States, having elected to pursue this claim in a court of the State of Washington, could obtain no more than what that state provides in the way of a judgment. R.C.W. 4.56.210 is as much a part of a Washington judgment as if fully incorporated therein." *In re Levinson*, 5 F.2d 75 (1925). "Thus since ten years have elapsed, appellant's judgment is not merely dormant, it is dead. Appellant has no judgment left to renew." *Id.*

The underlying Sheriff's sale is also void because the sale occurred more than 60 days after the Order of Sale was entered, which violated RCW 6.17.120 - the execution shall be returned with a report of proceedings under the writ within sixty days after its date to the clerk who issued it. See *Albice v. Premier Mortg. Servs. of*

Wash., Inc., 174 Wn.2d 560, 568, 276 P.3d 1277 (2012). (“When a party’s authority to act is prescribed by a statute and the statute includes time limits . . . failure to act within that time violates the statute and divests the party of statutory authority. Without statutory authority, any action taken is invalid.”).

Petitioner has sufficiently argued to the Superior Court and the Court of Appeals that the underlying foreclosure judgment is void as a matter of law on this basis. Both lower courts rejected this argument, and The Supreme Court of Washington affirmed the rejection. Contrary to established caselaw and in conflict with established precedent necessitates the United States Supreme Court’s review.

II. THE DECISION BELOW CONFLICTS WITH ESTABLISHED LEGAL PRINCIPLES SURROUNDING A PARTY’S LEGAL STANDING TO FORECLOSE.

It is well established that a party must have legal standing to bring forth a legal claim against another. This is especially important in cases such as Petitioner’s, where his protected interest in the subject property is at stake. Here, Petitioner adequately proffered to the Superior Court and the COA that the foreclosing entity had no standing to foreclose. Petitioner met his burden of proof through his filing and presentation of an Expert Report to this effect. The Superior Court completely disregarded the Expert Report, giving it no weight to Petitioner’s defenses to this unlawful foreclosure action. Respondents, as non-legal entities with no interest in the subject Deed of Trust, Mortgage or Note, did not have legal standing to foreclose. It was clear error for the Superior Court and the COA to overlook this critical fact.

There are both enforcement rights and ownership rights associated with promissory notes. "The holder of a note is the party entitled to enforce it." *Villegas v. Nationstar Mortg., LLC*, 8 Wn. App. 2d 878, 889-90, 444 P.3d 14 (citing RCW 62A.3-301), review denied, 194 Wn.2d 1006 (2019). "The owner has the right to the economic benefits of the note, such as monthly mortgage payments and foreclosure proceeds." *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 524, 359 P.3d 771 (2015). The Washington Supreme Court has explained that the person entitled to enforce the note "and the owner of the note can be the same entity, but they can also be different entities." *Id.* Washington law provides, "A person **may** be a person entitled to enforce the instrument even though the person is not the owner of the instrument." RCW 62A.3-301 (emphasis added); see also *Brown*, 184 Wn.2d at 525.

The Deed of Trust Act defines "beneficiary" as "the holder of the instrument or document evidencing the obligations secured by the deed of trust." RCW 61.24.005(2). When a borrower defaults, foreclosure is an available remedy for the proper beneficiary. *Umpqua Bank v. Shasta Apts., LLC*, 194 Wn. App. 685, 697, 378 P.3d 585 (2016) (emphasis added). Here, Respondents fall under none of the before-mentioned definitions of a person legally entitled to foreclose. Respondents utilize fictitious names, all non-legal, non-existent entities.

Accordingly, as there was no showing of adequate legal standing, and there was clear error on the lower courts, review by the United States Supreme Court is warranted.

III. THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION REQUIRES DUE PROCESS OF LAW IN PROTECTING INDIVIDUAL PROPERTY INTERESTS. PETITIONER'S FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED.

Petitioner's property interest has been at stake since the initiation of these lengthy legal proceedings. Respondents knew, or should have known, this. The lower courts knew, or should have known, this. In spite of this knowledge, the lower courts' decisions violated Petitioner's Fourteenth Amendment right to due process when significant property interests were at stake.

Firstly, the COA order affirming the lower court's ruling was entered in error as the true record reflects that the Superior Court "overruled" Petitioner's objections, and did not confirm the foreclosure sale. However, the record was clearly misplaced by the Clerk's Office, or was never created by the Superior Court Clerk. This detrimentally affected Petitioner's ability to fully argue his case to the Court of Appeals. As a result of this due process violation, Petitioner was adversely ruled against by the Court of Appeals. The Court of Appeals went one step further in misconstruing the procedural history of the case. At the February 10, 2017 hearing, the foreclosure sale had not been confirmed. At that hearing, clearly all the Court ruling dealt with was Petitioner's objections to the sale. The Superior Court clearly requested that the Respondent file a separate motion in order to have the foreclosure sale officially confirmed, as required under Washington law. The Court of Appeals mistakenly thought that confirmation of the sale had happened, when in fact, it had not, again violating Petitioner's due process rights. The Superior Court entered an

order confirming the sale *nunc pro tunc* to February 10, 2018, because it was a misrepresentation for Counsel for Respondent to claim he did not bring an order for confirming the sale to the hearing. Counsel submitted it later by motion as instructed by the Court. Petitioner brought up and referenced the actual court record to prove this misrepresentation. The Court of Appeals overlooked this misrepresentation and the Supreme Court of Washington then went on to ignore this due process violation and refused to even hear Petitioner's petition for review.

The pertinent text of the Fourteenth Amendment provides:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State *deprive any person of life, liberty, or property, without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws." (emphasis added). See also *Parratt v. Taylor*, 451 US 527 - Supreme Court 1981.

"Liberty" and "property" are broad and majestic terms. They are among the "[g]reat [constitutional] concepts . . . purposely left to gather meaning from experience. . . . [T]hey relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged." *National Ins. Co. v. Tidewater Co.*, 337 U. S. 582, 646 (Frankfurter, J., dissenting). For that reason, the Court has fully and finally rejected the wooden distinction between "rights" and "privileges" that once seemed to govern the applicability of procedural due process rights. The Court has also made clear that

the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money. *Connell v. Higginbotham*, 403 U. S. 207, 208. Here, Petitioner's due process rights were violated by the lower courts and Respondents. Petitioner has a significant interest in protecting his property interest, as protected under the United States Constitution and applicable Washington State law.

CONCLUSION

For the reasons herein, the petition for writ of certiorari should be granted.

Dated: December 30th 2021.

Respectfully submitted,



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