No. 22-460

In the

Supreme Court of the United States

JOSHUA C. PLUMB, et al.,

Petitioners,

v.

U.S. BANK NATIONAL ASSOCIATION, et al.,

Respondents.

On Petition for a Writ of *Certiorari* from
Washington Supreme Court
Case No. 100394-3

PETITION FOR REHEARING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

RULES

OTHER

I. INTRODUCTION

This Petition for Rehearing, like the one recently filed in *Larson v. Snohomish County*, Supreme Court No. 22-449, asserts that judicial officers in Washington State are manipulating evidence and law so as to avoid conducting the *judicial inquiries* raised by homeowners challenging foreclosures. The Plumbs use the term *judicial inquiry* here as this Nation's courts have traditionally defined that term, *i.e.*, as an inquiry which "investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist."

II. PETITION FOR REHEARING

This Petition for Rehearing is being timely filed pursuant to Supreme Court Rule 44(2) and is based on the new matter reflected in Part III hereof. *Id.*

The only *judicial inquiry* which the Plumbs raised in their Writ Petition was that the purported entity labeled "Plaintiff" in this case, i.e., "*U.S. Bank National Association, as successor in interest to Wilmington Trust Company, as trustee, successor in interest to Bank of America, National Association, as Trustee for Structured Asset Trust Mortgage Pass-Through Certificates Series 2005-1*" was not the holder of the 2004 promissory Note their parents signed in favor of Finance America, LLC. *See e.g.*, Writ Petition, Statement of Issues, i.

The evidence which the Plumbs presented in support of this *judicial inquiry* before the Trial Court included an on-the-record concession by "Plaintiff's" counsel that Deutsche Bank, as a trustee for a different trust, not the "Plaintiff" identified above, was the holder of the pertinent promissory Note at the time Plaintiff's Complaint was filed. (*See* Writ Petition at p. 4, citing Appendix at 48a-51a.) Furthermore, evidence produced by "Plaintiff" through its servicer and purported attorney-in-fact created an issue of fact for purposes of summary judgment that the Plumbs' Note was held and owned by Deutsche Bank at the time "Plaintiff's" complaint falsely alleged otherwise. (*See* Writ Petition, p. 3-4.)

Based on these facts applicable to the *judicial inquiry* the Plumbs posed, *i.e.*, that "Plaintiff" was not the holder of the Note when "Plaintiff's" complaint was filed, the Trial Court held these facts did not matter because "Plaintiff" had produced evidence that "Plaintiff" had subsequently obtained the Plumbs' promissory Note before Plaintiff's motion for summary judgment was granted. (*See* Writ Petition at p. 4, citing Appendix at 48a-51a.) The Plumbs appealed the Trial Court's legal decision in this regard, arguing the Trial Court could not invoke the judicial Power of the State to adjudicate a summary judgment in favor of a Plaintiff where there was a question of fact regarding its right to foreclose.

The Plumbs claim that Division Two of the Washington Court of Appeals refused to consider the

judicial inquiry they raised in their appeal, *i.e.*, that the Trial Court erroneously held that "Plaintiff" did not have to prove any interest in the Note and related security agreement in order to bring a judicial foreclosure action against them, based on two obviously incorrect pretexts. First, the judges of that Court of Appeals erroneously held there was no evidence the "Plaintiff" did not hold the Note at the time that foreclosure complaint was filed, notwithstanding this fact was conceded by "Plaintiff's" counsel and demonstrated by discovery. *See supra.* Secondly, the judges of that Court of Appeals wrongly held the law imposed the burden of proving the "Plaintiff's" lack of standing was on these *pro se* Defendants, notwithstanding that is legal nonsense because the Plumbs challenged standing in their answer to the complaint.

The Plumbs brought two petitions for discretionary review with Washington's Supreme Court, both of which were summarily denied without explanation. The factual component of the *judicial inquiry* posed for the Washington Supreme Court in both of those petitions was that the Court of Appeals erroneously found there was no question of fact regarding whether the "Plaintiff" possessed the Note at the time the complaint was filed notwithstanding the Trial Court's specific finding otherwise, plus "Plaintiff's" counsel's concession of this fact, and that discovery evidence which demonstrated that Deutsche Bank was the holder of the Plumb's promissory Note when Plaintiff's complaint was filed.

The legal component of the *judicial inquiry* the Plumbs posed to the Washington Supreme Court was that the "Plaintiff," not the Plumbs as defendants, needed to prove "Plaintiff's" standing to invoke the judicial Power of the State of Washington, where such standing had been appropriately challenged in their Answer to "Plaintiff's" Complaint.

Notwithstanding the merits of their *judicial inquiry* regarding the aforesaid rulings by the Court of Appeal judges, the Washington Supreme Court refused to review the Court of Appeals rulings and offered no explanation regarding why this was appropriate. This Court did the same thing in declining to consider the appellate *judicial inquiry* the Plumbs' posed in their Writ Petition.

III. GROUNDS FOR REHEARING

The new matter which the Plumb's urge this Court to consider in determining whether "Plaintiff" should be ordered to respond to their Writ Petition is evidence demonstrating that Washington State's government, through its recent office holders, has corrupted the judicial Power of Washington's government in such a way that justice is routinely not provided to Washington homeowners, like the Plumbs. *See e.g. 2015 Washington State Civil Legal Study Update*, at page 3, where it states: "Justice is

absent for low-income Washingtonians who frequently experience serious civil legal problems."[1]

It is the Plumbs' position here that one way this system of injustice has been institutionalized in Washington State has been through its judges' failure to adjudicate those *judicial inquiries* posed by homeowners.

A. Most original wet ink promissory notes executed prior to 2008 were destroyed in favor of keeping an electronic copy.

Petitioner's request this Court judicially notice that it was a common business practice in 2004 (the year in which the Plumbs' promissory Note was executed) for such promissory notes (purportedly secured by deed of trust mortgages) to be destroyed shortly after they were signed. *See e.g., In Re: Amendments to Rules of Civil Procedure and forms for Use with Rules of Civil Procedure*, Case No. 09-1460 (2008), Statement by Florida Bankers Association,[2] which states in pertinent part:

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[1] The Washington Supreme Court's "Civil Legal Needs Study Update" can be accessed at: https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf

[2] The "Plaintiff" US Bank in this case, as well as those banking interests it claimed to succeed by way of its caption, i.e., Bank of America, were both Members of the Florida Bankers Association at the time this comment was made to the Florida Supreme Court.

In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from the form in which the note is transferred. It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed. Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities. The records of ownership and payment are maintained by a servicing agent in an electronic database.

The reason "many firms file lost note counts as a standard alternative pleading in the complaint" is because the physical document was deliberately eliminated to avoid confusion immediately upon its conversion to an electronic file. *See State Street Bank and Trust Company v. Lord*, 851 So. 2d 790 (Fla. 4th DCA 2003). Electronic storage is almost universally acknowledged as safer, more efficient and less expensive than maintaining the originals in hard copy, which bears the concomitant costs of physical indexing, archiving and maintaining security. It is

> a standard in the industry and becoming the benchmark of modern efficiency across the spectrum of commerce—including the court system.[3]

(Emphasis supplied)

Because both US Bank and Bank of America were members of the Florida Bankers Association when this comment was made, it is a new matter which demonstrates that not only was there a question of fact regarding whether the "Plaintiff" (as opposed to Deutsche Bank) held the Note at the time the complaint was filed, but there was also a question of fact regarding whether the original Note had been destroyed pursuant to the prevalent lending practices of that time. Determining whether the "Plaintiff" actually held the original Note at the time the case was filed was thus also a relevant factual issue in determining what law should be applied under the circumstances of Plaintiff's complaint. *See e.g.,* Wash. Rev. Code 62A.3-309 setting forth the requirements for enforcing lost or destroyed promissory notes as opposed to those in which the original Note exists.

B. New matter indicates Washington present-day judges have aligned themselves with businesses seeking to enrich themselves by stealing People's homes.

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[3] Comment by the FBA is accessible at Florida Supreme Court: https://supremecourt.flcourts.gov/content/download/328731/file/09-1460_093009_Comments%20(FBA).pdf

The Plumbs recently learned that Washington courts (presumably through their judges) have applied for and obtained D-U-N-S numbers. Dun & Bradstreet claims its D-U-N-S® Number is "a unique nine-digit identifier ***for businesses that is associated with a business's Live Business Identity***…" (Emphasis Supplied). The business names for those Washington courts which have adjudicated the underlying dispute and subsequent appellate actions in this case are identified as live businesses known as the "Judiciary Courts of the State of Washington," but other Washington courts are referenced as being the "live businesses" judges.

In *Todd v. United States*, 158 U.S. 278 (1895), this Court observed: "A court is not a judge, nor a judge a court. A judge is a public officer, who, by virtue of his office, is clothed with judicial authorities. A court is defined to be a place in which justice is judicially administered." *Id*. at 158 U.S. 284.

The Plumbs assert that courts claiming to be businesses operated by judges and business entities, which businesses refuse to adjudicate those *judicial inquiries* raised by the interested parties to a dispute, are not those types of government institutions which can legitimately exercise the judicial Power under this Nation's organic law relating to Due Process.

Similarly problematic is that Washington's government and government workers (including judges) have had a fiduciary relationship with State

Street Bank Corporation ever since judges' retirement accounts became invested in mortgage-backed securities. In 2010, while this fiduciary relationship between State Street Bank Corporation and Washington State worker and programs was in effect, the United States Securities and Exchange Commission issued an "Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order."[4]

> This Order states, in pertinent part:
> 1. During the subprime mortgage crisis in 2007, State Street engaged in a course of business that misled investors about the extent of subprime mortgage-backed securities held in certain unregistered funds under its management. As a result of State Street's conduct, investors in State Street's funds lost hundreds of millions of dollars during the subprime market meltdown in mid-2007.
>
> 2. State Street offered investments in certain collective trust funds to institutional investors, including pension funds, employee retirement plans, and charities. These funds included two substantially identical funds – referred to together as the Limited Duration Bond

[4] This Order is accessible at: https://www.sec.gov/litigation/admin/2010/33-9107.pdf

Fund (the "Fund") – made available to different categories of investors. Other actively managed bond funds and a commodity futures index fund managed by State Street ("the related funds") also invested in the Fund. State Street established the Fund in 2002 and marketed the Fund by saying it utilized an "enhanced cash" investment strategy that was an alternative to a money market fund for certain types of investors. By 2007, however, the Fund was almost entirely invested in or exposed to subprime residential mortgage-backed securities ("subprime investments"). Nonetheless, State Street continued to describe the Fund to prospective and current investors as having better sector diversification than a typical money market fund, while failing to disclose the extent of its exposure to subprime investments.

3. When the subprime market collapsed in mid-2007, many investors in the Fund and the related funds were unaware that the Fund had such significant exposure to subprime investments. In fact, the Fund's offering materials, such as quarterly fact sheets, presentations to current and prospective investors, and responses to investors' requests for proposal, contained misleading statements and/or omitted material information about the Fund's exposure to subprime

investments and use of leverage. As a result, many investors either had no idea that the Fund held subprime investments and used leverage, or believed that the Fund had very modest exposure to subprime investments and used little or no leverage.

4. Beginning on July 26, State Street sent a series of shareholder communications concerning the effect of the turmoil in the subprime market on the Fund and the related funds that misled investors and continued State Street's failure to disclose the Fund's concentration in subprime investments. At the same time, State Street provided certain investors with accurate and more complete information about the Fund's subprime concentration. These other investors included clients of State Street's internal advisory groups, which provided advisory services to some of the investors in the Fund and the related funds. During 2007, State Street's advisory groups became aware, based on internal discussions and internally available information, that the Fund was concentrated in subprime investments. Prior to July 26, 2007, at least one internal advisory group also learned that State Street was going to sell a significant amount of the Fund's distressed assets to meet significant anticipated redemptions. State

> Street's internal advisory groups subsequently decided to redeem or recommend redemption from the Fund and the related funds for their clients. State Street Corporation's pension plan was one of those clients. State Street sold the Fund's most liquid holdings and used the cash it received from these sales to meet the redemption demands of these better informed investors, leaving the Fund with largely illiquid holdings.

Judges have always been known by the company they keep. The Plumbs assert that Washington's judges' alliance with State Street Bank and other wealthy businesses in order to take homes without conducting appropriate *judicial inquiries* does not speak well of Washington's government, Washington courts, Washington officeholders and their business allies.

C. Washington's Supreme Court routinely fails to address arguments that Washington State's judicial Power is limited in any way by the United States Constitution.

The Plumbs also assert here, as new matter, that just as Washington's Court of Appeals and Supreme Court refused to adjudicate the application of law to the facts of this matter, those same appellate courts have also consistently manipulated evidence and law in other cases involving homeowners to reach

results in the best interests of Washington State's government, Washington State's government workers (including judges) and those entities' big business allies, at the expense of ordinary homeowners.

A good example of this, and one which is presently before this Court now in a similar petition for rehearing is *Larson v. Snohomish County*, Supreme Court Cause No. 22-449. In the Larsons' Petition for Rehearing, the Larsons assert, and no opposing party has disputed, that the Clerk of the Snohomish County Superior Court (who was a defendant in that case) failed to file declarations and other materials that the Larsons submitted as evidence opposing the private defendant's summary judgment motion for foreclosure. The Larsons also assert in that same Petition for Rehearing that the *pro tempore* judge in that case failed to indicate in his Order that he actually considered any of the several other declarations and materials the Clerk did allow the Larsons to submit into the Court record. Just as judicial officers' failure to consider the evidence and law presented in Larson's response before giving away their home in the Larson case was wrong, it was also wrong for Washington's judicial officers not to fairly and honestly address the fact and law issues raised by Petitioner's in this case.

Similarly, in *Cozza v. PNC Bank, National Association*, 16 Wn. App. 2d 1073 (2021), the Washington Court of Appeals inappropriately decided it need not consider homeowner Cozza's argument that Plaintiffs' motion for summary judgment of foreclosure

must be adjudicated in the trial court's equity jurisdiction, notwithstanding the parties agreed this was so. *See* e.g., *Borton & Sons, Inc. v. Burbank Props., LLC*, 196 Wn.2d 199, 206-07, 471 P.3d 871, 874-75 (2020). This would have made a difference in the outcome of Cozza's case because the trial court was required to engage in fact finding in order to grant equitable relief by way of summary judgment. Instead of doing his job, the Washington State superior court judge ignored the facts, the law, and the parties arguments in order to reach a result not merited by our history or Constitutional history.

Once again, as it did in this case and *Larson*, the Supreme Court of Washington in *Cozza* overlooked the failure of the trial court and the Court of Appeals to decide facts and follow law when ruling on the contentions of the parties. *See PNC Bank, Nat'l Ass'n v. Cozza*, 198 Wn.2d 1011, 495 P.3d 830 (2021) (refusing to grant review without comment for not doing so). In fairness, it should be noted that this U.S. Supreme Court did pretty much the same thing when it denied Cozza consideration of even a response to her arguments, except, of course, for Justice Alito who asserted that he "took no part in the consideration or decision of this petition." *Cozza v. PNC Bank, Nat'l Ass'n*, 142 S. Ct. 2731, 212 L.Ed.2d 791 (2022).

The Plumbs ask humbly, with their home and lives now in the hands of this Court, that the Justices order a response to their Petition for Review because

nothing has been hidden from this Court and the People should be given an opportunity to see in order to evaluate just how well this Nation's lower courts are accountable to this Court.

IV. CONCLUSION

The Plumbs' petition for rehearing of their petition for a writ of certiorari should be granted. The Plumbs' petition for a writ of certiorari should be reinstated and respondents ordered to respond to it.

DATED this 13th day of February, 2023.
Respectfully submitted,

/s/ Scott E. Stafne
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V. CERTIFICATION OF COUNSEL

I hereby certify that this petition for rehearing is restricted to the grounds as specified in Sup. Ct. R. 44.2 and has been presented in good faith and not for delay.

DATED this 13th day of February, 2023.
Respectfully submitted,
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VI. CERTIFICATE OF COMPLIANCE WITH WORD COUNT

I hereby certify that this petition for rehearing contains 2,996 words, excluding the parts that are exempted by the Rules.

DATED this 13th day of February, 2023.
Respectfully submitted,
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