

Supreme Court, U.S.

FILED

SEP 14 2022

OFFICE OF THE CLERK

No. 22-489

IN THE  
SUPREME COURT OF THE UNITED STATES

KEVIN CHARLES BERTRAM,

*Petitioner,*

vs.

U.S. BANK N.A. AS TRUSTEE

*Respondent.*

On Petition For A Writ Of Certiorari

State of Florida Second District Court Appeal

**PETITION FOR WRIT OF CERTIORARI**

Kevin C. Bertram  
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**QUESTION(S) PRESENTED**

The Truth in Lending Act provides that a borrower "shall have the right to rescind the transaction until midnight of the third business day following...the delivery of the information and rescission forms required under this section ... by notifying the creditor ... of his intention to do so." 15 U.S.C 1635(a). The Act further creates a "[t]ime limit for [the] exercise of [this] right," providing that the borrower's "right of rescission shall expire three years after the date of consummation of the transaction" even if the "disclosures required ...have not been delivered Id. 1635(f).

**THE QUESTIONS PRESENTED:**

1. Does a borrower exercise his absolute right to rescind a transaction in satisfaction of the requirements of Section 1635 by "notifying the creditor" in writing within three days for no reason, or in writing within the extended three years for TILA violations from the consummation of the transaction, as the Third, Fourth, Fifth, Eleventh Federal Circuits and the U.S. Supreme Court have held?

**THE QUESTIONS PRESENTED - Continued**

2. Does the timely notice effectuate the absolute right to rescind and toll the right to file suit if necessary?
3. Can a court ignore and nullify or find ineffective the borrowers absolute three day right to cancel, or the borrowers extended three year right to cancel for actions taken ie... forced funding of the transaction by the lender or payments made by the borrower?
4. Does the creditor's security interest become void when a consumer rescinds a transaction leaving the consumer not liable for any amount, including any finance charge?
5. Is the creditor required to take action within 20 days of receipt of the notice to rescind?
6. Does the court have an obligation to determine whether the transaction qualifies to rescind and whether the right to cancel notice was timely?
7. Does the right to cancel notice transfer to an assignment of the transaction?

## **LIST OF PARTIES**

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

### **RESPONDENT'S**

KEVIN CHARLES BERTRAM

KIMBERLY VI RANKINE-BERTRAM

UNITED STATES OF AMERICA

### **PLAINTIFF**

U.S. BANK N.A. as TRUSTEE

### **STATEMENT OF RELATED CASES**

KEVIN C. BERTRAM v. U.S. BANK, N.A.

Case No. 8:09-cv-243-T-TBM

In re: Kevin Charles Bertram

Case No. 8:09-bk-27707-CPM

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April 29, 2022 Affirmed-Per Curiam Affirmed Florida Second DCA.	
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December 18, 2020 Order Denying Relief From Judgment Sixth Judicial Circuit State Florida.	
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**STATUTES AND RULES**

U.S. CODE 1601  
U.S. CODE 1635  
U.S. CODE 1641  
Regulation Z 226.23

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

The Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

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**OPINIONS BELOW**

The opinion of the highest state court to review the merits appears at Appendix B to the Petition and is unpublished.

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**JURISDICTION**

**For cases from state courts.**

The date on which the highest state court decided my case was April 29, 2022. A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: June 16, 2022, and a copy of the order denying rehearing appears at Appendix A.

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

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#### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Relevant provisions of the Truth in Lending Act. 15 U.S.C 1601 et seq., and of the Federal Reserve Board's Regulation Z.

14th Amendment

## **STATEMENT OF THE CASE**

On Friday July 28, 1998 Kevin Charles Bertram and Kimberly VI. Rankine-Bertram appeared at a title company to close on a refinance loan with a new and different lender on their primary residence. Their home had a market value of \$ 1.2 million dollars and to date, a market value of \$ 1.8 million dollars. At the refinance loan closing, Kevin Charles Bertram, and Kimberly VI. Bertram signed paperwork to obtain a refinance loan. After signing and reviewing the refinance loan paperwork at the title company, Kevin Charles Bertram noticed that there were discrepancies in the refinance loan paperwork, in that, one set of the refinance loan paperwork stated the amount of the refinance loan to be \$ 180,000.00 (as previously agreed) and the other set of the refinance loan paperwork to be \$ 195,000.00. In addition to those discrepancies, the refinance loan paperwork stated the interest rate to be 7.25% (as previously agreed) and the other set of the refinance loan paperwork stated the interest rate to be 8.25%. Immediately, Kevin Charles Bertram brought the discrepancies to the attention of the title closing agent. The title closing agent stated she could not change or fix the refinance loan paperwork and I would have to take the matter up with the lender New

Century Mortgage Corporation, who was the loan originator and master servicer from a securitized loan. I immediately contacted New Century Mortgage Corporation regarding the refinance loan paperwork discrepancies and was told they had not received the refinance loan paperwork and to contact them back. On Monday July 31, 1998 I sent a letter to New Century Mortgage Corporation (named on the 3 day right to cancel form) that I wished to cancel the refinance loan transaction that took place on July 28, 1998 on my primary residence. On July 31, 1998 New Century Mortgage Corporation forced funded the loan anyway, before the 3 day right to cancel time expired on August 1, 1998. I was told by New Century Mortgage Corporation that the loan was funded and there was nothing I could do. I then researched the law and discovered that the three day right to cancel notice would extend up to three years upon discovering Truth in Lending Act violations U.S. Code 1601. I discovered several Truth in Lending violations and sent additional right to cancel notices to New Century Mortgage Corporation within three years from the consummation of the transaction. The right to cancel the refinance transaction with a new and different lender on my primary residence was to be a private matter between the lender and the borrower. I had several conversations with New Century

Mortgage Corporation regarding the rescission of the refinance loan transaction. On January 26, 2001 well within the three years to rescind, I received confirmation of my intent to cancel the transaction from the July 28 1998 refinance loan closing. New Century Mortgage Corporation offered to refinance the July 28, 1998 refinance loan transaction however, refused to credit the past timely monthly payments I made, to the principle with no interest as required by law. I continued to seek the rescission of my refinance loan transaction with New Century Mortgage Corporation until November 2001 as a private matter with no resolution. I stopped making the loan payments in July 2001. In November 2001, U.S. Bank N.A. as Trustee a party to the pooling and service agreement with New Century Mortgage Corporation and Salomon Brothers a securitized loan filed a foreclosure action against my \$ 1.2 million-dollar primary residence to recover the monies owed on the refinance loan transaction that I canceled. I filed a rescission counterclaim to defend the foreclosure action. The judge struck my rescission defense and rescission counterclaim. On April 2006 the Court issued an order to foreclose on my primary residence a loss to me of \$ 1.2-million-dollar equity in the property. I appealed to the Florida Second District

Court of Appeal from the original foreclosure judgment, from a relief of judgment order (after the U.S. Supreme Court Jesinoski decision) and filed an action in the Federal Middle District of Court in Tampa Florida to enforce the rescission notice with no success. Therefore, I have petitioned the U.S. Supreme Court for review.

## **REASONS FOR GRANTING THE PETITION**

The character of reasons for granting the petition:

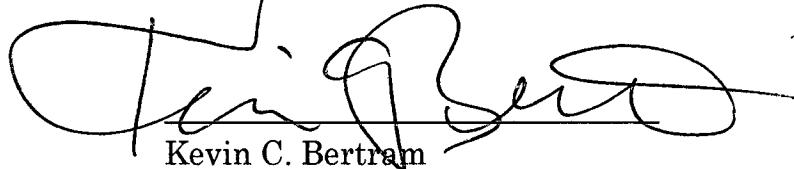
1. A state court has decided an important question of federal law that has not been, but should be, settled by this Court, that conflicts with relevant decisions of Third, Fourth, Fifth, Eleventh Federal Circuits and the U.S. Supreme Court.
2. STATE COURTS AND FEDERAL COURTS ARE DEEPLY DIVIDED OVER WHETHER A BORROWER EXERCISES THE RIGHT TO RESCIND UNDER SECTION 1635 BY NOTIFYING A CREDITOR OF HIS INTENT TO DO SO REGARDING THE SEVEN QUESTIONS PRESENTED IN THIS PETITION.
3. The decision is of national importance for the Court to decide because of the importance of the national mortgage industry that is required to adhere to Federal regulations to deliver informed use of credit and fairness to protect the public.

4. THE MORTGAGE INDUSTRY PROVIDES NATIONAL COMMERCE THAT MUST BE REGULATED BY LAWS TO PROTECT THE CONSUMERS THAT OBTAIN LOANS FOR THE PURPOSES OF SECURING THEIR PRIMARY REAL ESTATE PROPERTY.

### CONCLUSION

The petition for a writ of Certiorari should be granted.

Respectfully submitted,



Kevin C. Bertram

Date: 11/17/2022