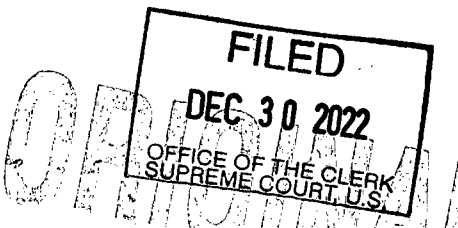
22-6478

NO.



In the Supreme Court of the United States

Hanan Shiheiber,

Petitioner,

v.

J.P. Morgan Chase Bank, N.A..

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

Hanan Shiheiber
Petitioner *Pro Se*
24700 Valley St, Apt 3034
Santa Clarita, CA 91321
(415) 410-7771

QUESTIONS PRESENTED

The fraud of various banks that occurred during the mortgage foreclosure crisis was exacerbated during the COVID-19 epidemic. This case presents the Court with the opportunity to lay out the rules of law that should be followed by courts in these cases and to resolve many of the outstanding issues, in which there is substantial conflict:

1. Washington Mutual, FSB, was dissolved by the FDIC and the FDIC agreed to sell to Chase *many* of Washington Mutual's loans, but some courts have concluded that Chase purchased all of the loans, even though, as in this case, the IRS concluded that Petitioner's mortgage was not included. Thus, the question is whether the ownership of a former Washington Mutual mortgage is a question of fact.

2. Whether Chase committed numerous violations of federal and state law such that it should be estopped from foreclosing on Petitioner's property.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE

Respondent J.P. Morgan Chase Bank, N.A. is incorporated in Delaware. Its shares are publicly traded.

RELATED CASES

None.

TABLE OF CONTENTS

Appendix

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

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 California Court of Appeal has not been officially reported. It is unofficially reported as *Shiheiber v. J.P. Morgan Chase Bank, N.A.*, 2022 Cal. App. Unpub. LEXIS 4625, 2022 WL 2964570 (Court of Appeal of California, First Appellate District, Division Two July 27, 2022) and is reproduced in the Appendix at A-2. The California Supreme Court denied review in an unreported order. It may be found *at Shiheiber v. J.P. Morgan Chase Bank, N.A.*, 2022 Cal. LEXIS 6381 (Supreme Court of California October 19, 2022, Opinion Filed), and in the Appendix at A-1.

JURISDICTION

The California Supreme Court denied review on October 19, 2022. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257.

STATEMENT OF THE CASE

A. Background

Petitioner, Hanan Shiheiber, brought this fraud and wrongful foreclosure action against JP MorganChase Bank. Shiheiber lost three

high-value properties in San Mateo County when Chase falsely claimed the IRS cleared out the account paying her mortgage, got a payment from her in the amount Chase told her was needed to bring the mortgage current, and then foreclosed anyway on the main property. Chase had a receiver appointed who ran the main property into the ground, and Chase foreclosed on the other properties even though it had money of Shiheiber's sitting in a back-up account, which it has never released.

Shiheiber lost the first trial, based on an erroneous court ruling. The California Court of Appeal reversed and awarded her a new trial. The second trial again resulted in a judgment for the defendant. The Court of Appeal affirmed and the California Supreme Court denied review.

B. Statement of Facts[1]

Hanan Shiheiber is a licensed commercial real estate broker. 4 RT 285, 8 RT 676. She owned three properties: (1) 789 El Camino Real, Burlingame, CA ("El Camino"), a 28-unit residential building called "Villa Tuscany"; (2) 1507-1509 Willow Avenue, Burlingame, CA ("Willow"), a duplex; and (3) 636 Hurlingham Avenue, San Mateo, CA ("Hurlingham"), a high-value residence formerly owned by former Chief Justice Earl Warren which became Shiheiber's home. 4 RT 298, 299, 322; 8 RT 681, 722.

---

[1]. "CT" refers to the Clerk's Transcript. "RT" refers to the Reporter's Transcript.

Shiheiber bought El Camino in August, 2005 for $4,350,000. 8 RT 684, 685. She paid a $1,300,000 down payment and obtained a loan for $3,050,000 from Washington Mutual at an adjustable interest rate. 8 RT 688, 695. The monthly mortgage payment was approximately $14,443.60. 8 RT 710, 711. That included principal and interest. 8 RT 692. When Chase purportedly took over in January 2010– *and then only as a mortgage servicer*– it increased the payment to $16,241.65. 8 RT 704, 711. The payments were to include property tax and other escrows; there was no impound account, but there was an authorization.10 RT 1070, 1071, 1092; 11 RT 1182.

Shiheiber bought Willow in August, 2005 at the same time from the same seller. To do so, she borrowed $740,000 and paid for the remainder in cash. 8 RT 701. The monthly payment on that mortgage loan was $3,591.27. 8 RT 714, 716. Shiheiber bought Hurlingham in June, 2006 for $1, 950,000. 8 RT 726. with an adjustable-rate loan, and in September 2007 she refinanced the loan with WAMU in the amount of $2,513,00.00 with an adjustable rate mortgage. 9 RT 756. The monthly payments on these mortgages, as well, covered property taxes and other escrows. 10 RT 1070, 1092.

El Camino

In 2007, the El Camino loan was pooled with other loans into a securitization trust. Therefore, it no longer belonged to WAMU on September

25, 2008, when the FDIC became the receiver for WAMU, or when the FDIC purportedly sold the WAMU loans to Chase, a matter that is the subject of substantial dispute. Chase never got an assignment of the note supporting the trust deed.

Shiheiber paid on the El Camino loan by automatic withdrawal from a designated account the 14th of each month. On January 22, 2010, Chase sent a notice to Shiheiber to the wrong address. The note stated that she was in default and had to pay $17,128.73 in principal, interest, late charges, costs and fees to cure,and that a new amount would increase to $34,182.46 on February 22, 2010 for two mortgage payments due. 10 RT 968.

Shiheiber's real mortgage payments should have been $13213.00 a month which is what she was paying to WAMU. Shiheiber's loan payments were going down, not up. She was making principal and interest payments to WAMU. When asked why the payments went up, Chase claimed it would be paying the property taxes in the payments. Chase never included tax payments when asked to pay the default mortgage payments.

This notice was premature, because Section 5.1 of her automatic withdrawal agreement gives her a 15-day grace period before default could be declared. On February 26, 2010, Chase instructed California Reconveyance Company ("CRC") to begin foreclosure on the El Camino loan. The Notice of

Default was filed after the lender which was lending Shiheiber the $4 million dollar loan sent to JPMC a Payoff of the loan request. This was done because JPMC didn't own the loan, and to paralyze Shiheiber from paying off the loan.

The first NOD was rescinded before Shiheiber went to the bank in person to pay the two mortgage payments. Shiheiber was not aware of this NOD filed against her property until she received a call from the new lender advising that JPMC filed an NOD in late March 2010.

On February 22, 2010, Keith Cousens of Chase, contacted Shiheiber on the phone and advised her of two defaulted payments. 8 RT 730. He informed her to arrange to bring the payments current, even though she could not understand how the $224,000 she had in the automatic withdrawal account had disappeared. 8 RT 732. Shiheiber asked to go to the Chase branch in Beverly Hills, California, to find out what had happened to her account which had the $224,000.00 at the time in it and would call Cousens back in an hour to clear up this issue of payments. 8 RT 733, 10 RT 1067.

Chase said the IRS had cleared out Shiheiber's account of $224,000 in the middle of the night, 10 RT 980, 1001, 1020, 1146, 1150, which made no sense because Shiheiber had no tax delinquency and the IRS does not conduct business that way. 10 RT 1155 [Plaintiff learned from IRS agent that they did

not levy on account]; 10 RT 1158. According to Internal Revenue Code Section 6330, the IRS is required to notify you in writing before levying. The notice must include information telling you about your right to appeal the threatened collection action within 30 days.

Chase also ignored a separate escrow account in which Shiheiber originally had $99,000 in back-up funds in case of emergency. 10 RT 1067. Chase removed $46,000 of that money and has never accounted for the amount removed or the $52,000 remaining till this day. Chase also did not consider Shiheiber having paid more toward the mortgage than her required payments.

Cousens agreed to waive the late fees, costs and miscellaneous charges if Shiheiber came in and paid the accumulated principal and interest of $32,483.20 by March 1, 2010. 8 RT 734. On March 1, 2010, after driving all night from Los Angeles to the Bay Area, Shiheiber appeared at Cousens's office and paid $32,483.30 via a $20,000 cashier's check and a personal check filled out right there with the amount Cousens said was needed to bring the obligation current, in reliance on Cousens's promised waivers. 8 RT 735, 737, 738; 9 RT 769. That is the amount of her January and February 2010 delinquency notice, minus late charges and costs waived. 8 RT 737.

Cousens accepted the money and never told her Chase would still

impose the late charges, costs and fees of $1,624.16 and would proceed with the foreclosure over that sum, or that her payment was insufficient to cure the default. He also said nothing about delinquent property taxes, which Chase was supposed to pay from an impound account requirement it had imposed, the existence and balance of which shows on every mortgage statement. He asked her to sign a loan modification request, which she later declined because she was happy with her existing loan. 9 RT 773, 10 RT 995, 997.

She sought a payoff statement for the loan from Cousens, as she was close to getting a $4,000,000 commitment from another lender to pay off Chase and start developing the property. 10 RT 1143. Cousens never mentioned to Shiheiber at the meeting that he filed an NOD against her on February 26, 2010 and rescinded it. 9 RT 776. He was setting her up to pay the mortgage payments and then file an NOD after receiving the payment because he knew she was trying to refinance the loan, had already requested the payoff thru the new lender, and very well knew that JPMC could not produce the payoff of the origination of the loan because they did not own the loan.

Instead to cover up their fraudulent behavior, JPMC Bank decided to file an NOD against Shiheiber to ruin her credit and reputation with the new

lender and insure she would not be able to get a new loan. The loan modification was not needed in her case because of this reason. Chase wanted to do a loan modification to cover up their fraudulent position on ownership of the loan.

Chase placed Shiheiber's payment into a suspense account. 11 RT 1234, 1236. This is illegal under Fannie Mae Guidelines[2]. Mortgage payments must be applied to the mortgage payments, not placed in an illegal suspense account.

Thinking her loan was reinstated, Shiheiber left to get married in Las Vegas. At 3:10 p.m. on March 1, 2010, after taking Shiheiber's money that morning and giving her paperwork for a loan modification to complete by March 5, 2010, Cousens instructed CRC to proceed with the foreclosure, which violated a provision in the note and trust deed requiring judicial foreclosure, in the sum of $77,161. 10 RT 970, 971. Shiheiber and her husband to be, an attorney, were "perplex[ed]" where this number came from. 10 RT 971.

Cousens denied in later testimony that he agreed to waive late charges and costs, 13 CT 1699 but after driving all night from Los Angeles to San

---

[2]. See *Bayramoglu v. Nationstar Mortg. LLC,* 51 Cal.App.5th 726, 733 n 3, 265 Cal.Rptr.3d 453 (2020).

Francisco, with a blank check to be filled out, Shiheiber certainly would have paid them if demanded.

Additionally, there was an entry in the customer service log saying not to file a Notice of Default, not to charge Shiheiber late fees or miscellaneous fees because Shiheiber had her money in her account swiped by the IRS. CRC recorded a Notice of Default without having any payment history or other supporting documents showing the default, which Shiheiber contends violated the law.

At trial, Attorneys Dennise Henderson and Richard Antinini produced a letter from the IRS which stated that Shiheiber has no liens for any years owed to the IRS.

On March 2, 2010, Chase sent Shiheiber a letter saying that delinquent property taxes had to be paid by the date set forth in the January 22, 2010 notice, or Chase may foreclose. 10 RT 1135.The letter was sent to the wrong address. 10 RT 1136. That date, February 21, 2010, had already passed. Also on March 2, 2010, CRC recorded a Notice of Default reciting an amount owed of $77,161.61 and never mentioned anything about payment of taxes. JPMC used the issue of unpaid taxes to cover up their fraudulent foreclosure.

On March 23,2010, Shiheiber received a call from Mia Blackler, JPMC attorney, that she needs to be in court tomorrow on March 24,2010.Mia

Blackler claimed to want to appoint a receiver for the 789 El Camino Real property in Burlingame, CA.

Shiheiber informed Mia Blackler that she had made her mortgage payments to Keith Cousens on March 1, 2010, so why would she need a receiver for the property? Blackler claimed that she didn't know about the payment to JPMC Bank. Shiheiber asked her to call Cousens and confirm this fact and to call her back. Shiheiber was driving at the time from Chicago to San Mateo.

Mia Blackler never called Shiheiber back. Instead she chose to go to court without ever serving Shiheiber and try to get an order from the San Mateo Superior Court Judge to get a receiver. The judge denied her claim because of non- service to the borrower. This continuous pattern of practice of non-service had been done by Mia Blackler and JPMC bank throughout this litigation.

On March 24, 2010, Chase sued Shiheiber in the San Mateo County Superior Court for judicial foreclosure, appointment of a receiver, specific performance and an injunction. Judge denied the request for the receiver due to non-service to the borrower. On June 7, 2010, CRC recorded a Notice of Trustee's Sale, scheduling a sale of El Camino on July 2, 2010.

On June 11, 2010, California Pacific Bank ("CPB"), a junior lienholder,

committed to loaning Shiheiber $67,000 to cure the Chase default. 11 RT 1355. This amount was for mortgage payments and Shiheiber even offered to pay Mia Blackler's attorney fees to resolve this issue. Instead of resolving this foreclosure, Chase decided to price to cure to triple that amount.

On June 17, 2010, the Court appointed a receiver for El Camino recommended by Mia Blackler, who is also the President of the Receivership Forum. 12 RT 1426, 1429, 1461. Mia Blackler went to court without serving Shiheiber and knowingly knowing Shiheiber was on a honeymoon cruise she had delayed because of Chase. 12 RT 1461.

The receiver began collecting the rents, which to that time had covered the mortgage payments, but did not use them to pay the mortgage, instead paying his own expenses and paying a property management company. He also broke some locks and took Shiheiber's loan documents stored there.

On June 25, 2010, Shiheiber obtained a temporary restraining order stopping the judicial foreclosure. On July 21, 2010, Cousens had the Trustee's Sale postponed to September 3, 2010. Shiheiber cross-complained in the Court case filed.

On August 12, 2010, CRC executed a Notice of Rescission of the Declaration of Default and Election to Sell, which it recorded. Shiheiber, on August 30, 2010, moved to terminate the receiver.

On September 9, 2010, CRC re-commenced foreclosure on El Camino, reciting that Shiheiber owed $237,854.40. Despite Shiheiber's spotless record with CPB, that bank declined Shiheiber's loan request on September 30, 3010 because of the Notice of Default Chase had recorded. 11 RT 1365. On October 21, 2010, Chase rescinded the Notice of Default. On October 24, 2010, the Court denied Shiheiber's request to terminate the receiver.

On January 25, 2011, CRC recorded yet a third Notice of Default and Election to Sell El Camino, reciting that $349,389.20 was owed on the debt. Shiheiber countered on February 7, 2011 with another motion for preliminary injunction because of the non-judicial foreclosure, which the Court denied on April 7, 2011. JPMC and Mia Blackler violated the one action rule for either a judicial or non-judicial foreclosure to apply, not both.

Because Shiheiber received approval from the San Mateo Superior Court Judge for a TRO, JPMC couldn't foreclose with the TRO in place. 11 RT 1202. So they decided to go around the Judge's TRO Order, resend the Notice of Default and file another Notice of Default in the non-judicial foreclosure process.[3]

Mia Blackler has an illegal pattern of practice where she files

---

[3]. This is in violation of the California one action rule (see, e.g., *Appel v. Hubbard*, 155 Cal.App.2d 639, 643, 318 P.2d 164 [1957]).

documents without service and she took the CMC Off calendar three times without Shiheiber's consent. Judge Daylana mentioned it in a minute order. When he asked the question why she did that, she wanted to hang up the phone on the Judge and tells him the building alarm in the building just went off and then hangs up the phone.

On May 13, 2011, CRC recorded a Notice of Trustee's Sale on El Camino, and on June 16, 2011 CRC recorded a Notice of Sale. 4 RT 298. CPB bought El Camino at foreclosure for $3,800,000. 11 RT 1357-58. El Camino had appraised when Shiheiber bought it for $6,000,000, and CPB appraised it on a sales comparison approach at $5,130,000 on June 29, 2010. Based on a capitalization of net income approach, a 3.5 cap rate, and the rent information CPB acquired, El Camino was worth $7,142,857 in July, 2013. The sale produced $506,123.96 of proceeds above loan payment and costs. Although the CRC form called for that money to go to CPB, CRC paid it to a law firm.

On August 3, 2011, even though El Camino had been sold to CPB at foreclosure almost two months earlier, Chase executed a Substitution of Trustee installing itself as new Trustee, claiming to be the successor in interest by reason of the FDIC/Chase Purchase and Assumption Agreement, which did not encompass El Camino in any event because WAMU had transferred that loan to a securitization trust before the FDIC took over

WAMU. That Substitution of Trustee was recorded August 26, 2011.

During the time El Camino was in and out of foreclosure, Chase gave wildly varying quotes as to the amount needed to reinstate. On a couple of occasions, the amount was less than previously quoted, once by $126,000. Chase sometimes offset the amount in suspense and sometimes not. It never included the supposedly delinquent taxes and never explained how it had a right to foreclose on a loan transferred to a securitization trust before the FDIC takeover. Shiheiber kept shopping for financing to save her property. No lender would loan on a property with a Notice of Default outstanding, and Chase kept re-recording Notices of Default.

Hurlingham

On August 20, 2010, Chase executed a Notice of Default and Election to sell Hurlingham, claiming Shiheiber owed $87,651.15, without making any effort to explore ways to avoid foreclosure as required by Civil Code §2923.5(b) of the Homeowner's Bill of Rights, and based on a robo-signed declaration falsely stating Chase made those efforts. Chase also had no assignment of the Deed of Trust evidencing its ownership. [4]On December 29, 2010, CRC issued a Notice of Trustee' Sale for Hurlingham, with sale set for

---

[4]. This is required under California law. See *Glaski v. Bank of America* 218 Cal.App.4th 1079, 1102, 160 Cal.Rptr.3d 449 (2013).

January 25, 2011.

On May 23, 2011, CRC recorded a Trustee's Deed of Sale to Chase on Hurlingham reciting that Chase credit bid $2,054,250 against a total obligation, including costs, of $2,897,784.64. Chase told Shiheiber that as of May 30, 2011, she owed $3,332,052.17, after an offset for her $32,483.30. Hurlingham appraised at $3,500,000 on December 29 2010 without considering its historical significance.

In September, 2006, Shiheiber received an offer for $7,600,000 for Hurlingham. An appraisal was done at the time and it came in at $7,500,000.

Willow

On November 23, 2010, CRC executed a Notice of Default and Election to Sell Willow, reciting that Shiheiber owed $55,889.86. A robo-signer falsely declared efforts had been made to assess Shiheiber's financial condition and explore means to avoid foreclosure. Those efforts were not required because Willow was not Shiheiber's residence, but the declaration was required internally to trigger the foreclosure.

Chase had no assignment of the Deed of Trust. On February 25, 2011, CRC recorded a Notice of Trustee's Sale on Willow, setting the sale on March 18, 2011. On May 10, 2011, CRC recorded a Trustee's Deed of Sale to Chase on Willow, reciting that Chase had paid $624,042 against an obligation,

including expenses, of $877,585.78. As of February 25, 2011, Willow was worth $1,100,000 on a cost or sales comparison approach. Willow was sold at $1,700,000. Willow development value was valued at $9,500,000.

Damages

As a result of Chase's breaches, misrepresentations, and wrongful foreclosure, Shiheiber has been in litigation with Chase for years, lost properties worth $5,130,000 - $7,142,857 (El Camino), $1,100,000 (Willow) and at least $3,500,000 (Hurlingham), as well as the chance to develop a $78 million condominium complex. 12 RT 1490, 1492-93, 1496. She also lost the $32,483.30, the $224,000 mysteriously swept out of her account, the income stream from El Camino and Willow, the ability to pay California Pacific Bank on its junior lien, and a lot of time and earnings as a real estate agent. She has become a physical and emotional wreck, suffering severe emotional distress. She became homeless for a time, which created that distress, and has developed a herniated disk that she attributes to the stress, on which she finally had surgery May 6, 2021.

Legal Proceedings

On March 6, 2013, on Chase's motion for judgment on the pleadings, the Court found the oral agreement between Shiheiber and Cousens to be unenforceable under the statute of frauds, and concluded that the failure to

record an assignment of the Deed of Trust before recording a Notice of Default did not render the Notice of Default defective under *Herrera v. Federal National Mortgage Association* (2012) 205 Cal.App.4th 1495, 1509. However, despite the statute of frauds, the Court denied Chase's motion as to Shiheiber's claims for breach of the implied covenant of good faith, fraud and deceit, unfair business practices, negligent misrepresentation, and money had and received.

In the first trial, the judge held an Evid. C. §402 hearing and concluded Shiheiber could not prove the fraud exception to the statute of frauds, which applied to Chase's oral agreement to forebear foreclosing. Because of the evidence she consequently could not introduce, she lost a nonsuit motion after opening statement.

The Court of Appeal agreed the statute of frauds applied because the oral agreement was a modification of an agreement subject to the statute of frauds and estoppel did not apply because Shiheiber's attorneys had not pled or argued it in the trial court. However, it reversed for Shiheiber to try her fraud claim, concluding the trial court had improperly weighed evidence and credibility when it should have just found that Shiheiber had put forth enough evidence to go to the jury on fraud. It cited Cousens's calculation of the amount of the payment, stating that it was the amount needed to

reinstate, proceeding with recording the Notice of Default the same day and sending a letter the next day that was both inconsistent with the conversation and misaddressed as sufficient evidence to support a fraud verdict.

The Court found immaterial to the appeal Cousens's testimony that he did not calculate the check amounts and did not know how she arrived at those amounts, and that he told her at the meeting the two checks would not reinstate her loan, Chase was proceeding with foreclosure, the loan was still in default due to Shiheiber's property tax delinquency, and she would be getting a letter to this effect.

During discovery, Shiheiber's attorneys subpoenaed the U.S. Bank documents that show Chase did not own this loan at the time it foreclosed. The documents were delivered to the Court in a sealed envelope. In the both trials the judge had them in hand but refused to open or consider them. The securitization trust must purchase title to its loans in bona fide transactions within a three-month window. There are anomalies in the documents, including an assignment of the Deed of Trust by U.S. Bank, Trustee of the securitization trust, to Chase, five months after it had already made such an assignment, and the same person signed that later assignment for U.S. Bank as signed the original assignment to U.S. Bank on behalf of Chase as attorney-in-fact for the FDIC. The securitization trusts have insurance for

loans that default, and if Chase was merely a servicer, it did not own or have the original note and proof of funding, so it did not have a right to foreclose.

An IRS publication shows that the securitization trust to which Shiheiber's loan supposedly was transferred had been voided. Chase was not reporting to the IRS that it owned loans on which people were reporting mortgage payments to Chase. Shiheiber's forensic mortgage analyst contended that rogue servicers such as Chase were claiming ownership of loans that insurance had paid off due to defaults and were foreclosing on properties without the right to do so.

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE ISSUE OF WHETHER CHASE OWNS MORTGAGES OF WAMU UNDER THE P & A AGREEMENT

It is undisputed that Shiheiber's mortgage loans originated with Washington Mutual and Washington Mutual was dissolved by the FDIC. According to a California Court, "As receiver, the FDIC agreed to sell to Chase *many* of Washington Mutual's assets and liabilities, including loans, loan commitments, and mortgage-servicing rights." *Brown v. Deutsche Bank Nat'l Tr. Co.*, 247 Cal. App. 4th 275, 277, 201 Cal. Rptr. 3d 892 (2016)

(emphasis added). "Many" does not mean "all."

Some courts "have found that the P & A Agreement evinced that JPMC purchased all of WAMU's loans and loan commitments, and therefore had the right to foreclose on a defaulting borrower." *JP Morgan Chase Bank Nat'l Ass'n v. Miodownik*, 91 A.D.3d 546, 937 N.Y.S.2d 192 (1st Dept.), lv dismissed 19 N.Y.3d 1017, 976 N.E.2d 241, 951 N.Y.S.2d 712 (2012) (citing *Haynes v. JPMorgan Chase Bank*, 2011 U.S. Dist. LEXIS 69703 (M.D. Ga. June 29, 2011), aff'd, 466 F. App'x. 763 (11th Cir. 2011). They are wrong.

As the Court observed in *Tasaka v. Bayview Loan Servicing, LLC*, 2022 U.S. Dist. LEXIS 60895, *17, n. 9, 2022 WL 992472 (E.D.N.Y. March 31, 2022), "the P&A Agreement was publicly filed, and Court may not take judicial notice of publicly available documents for the truth of the matter asserted therein" (rejecting *JPMorgan Chase Bank, National Assn. v. Russo*, 121 A.D.3d 1048, 1048, 996 N.Y.S.2d 68 (2d Dept. 2014)). Another Court similarly found "that there is a genuine issue of material fact as to whether the P & A Agreement applies to the subject loan." *Chandler v. Wash. Mut. Bank, F.A.*, 2011 U.S. Dist. LEXIS 142200, *18, 2011 WL 6140926 (D. Haw. December 9, 2011)

Banks are required to report all mortgage loans owned by them to the IRS (26 CFR § 1.6050H-2). Also, in the IRS 938 Publication, all loans owned

by JP Morgan Chase Bank are listed (https://www.irs.gov/pub/irs-pdf/p938.pdf). Appellant's three properties loans were never listed and thus Chase never owned them.

This Court needs to grant certiorari to resolve the conflict in decision between the various courts on the scope of the P & A Agreement and the position of the Internal Revenue Service.

II. THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER CHASE COMMITTED OUTRIGHT FRAUD IN THIS AND OTHER CASE BY REASON OF IT VIOLATION OF STATE AND FEDERAL LAW AND THIS IS ESTOPPED FROM FORECLOSING ON PROPERTY

As detailed in the Third Amended Complaint and in the testimony at trial, none of which is rebutted, Chase committed substantial violations of Federal and California law as codified in Civil Code § 29241and outright fraud. They are catalogued below:

Initially, the banks are to wait 120 days before filing a notice of default against a borrower. They have to let you know they've filed it within 10 days. It's an official legal document informing you that you are in a state of default on your loan. It must include information about your options for getting out of default. For example, you can pay all the back payments, along with interest and fees, to get out of default. You'll also need to keep up your insurance and property taxes.

Then the bank must wait three months before it can file a notice of sale, which may not be conducted until 20 days has elapsed. This is a total of approximately seven months.

The Civil Code also requires that they have a valid Assignment of a Deed of Trust and an Assignment of a Trustee. They also must have documents from the origination of the loans, and have them for a period of time of three years.

JP Morgan Chase bank never had documents from the origination of the three loans with Washington Mutual bank. The Civil Code also discusses payoff of the loan, namely that a borrower has a right to pay off the loan prior to the existing lender recording the notice of default.

In this case, JP Morgan Chase bank filed a notice of default in January 2010, and March 2, 2010 when they received a payoff demand from a different lender. They filed a notice of default on Shiheiber's property because they could never come up with the original payoff of the loan from Washington Mutual. Also, Shiheiber was not provided with a grace period of 120 days was given before filing the notice of default. No registered letter was sent to Shiheiber's address.

Keith Cousens took Shiheiber's payment of $32,483.30 and never applied it to her mortgage payments. 8 RT 735, 737, 738; 9 RT 769. Instead,

filed two notices of default against the properties without ever allowing a 120 day period to elapse because he knew Chase couldn't come up with the payoff of the original loan with Washington Mutual bank. 9 RT 776. They withdrew the $224,000.00 out of her Chase checking account to make it look like she was not paying her mortgage payments. 10 RT 980, 1001, 1020, 1146, 1150. Chase also ignored a separate escrow account in which Shiheiber originally had $99,000 in back-up funds in case of emergency. 10 RT 1067. Chase removed $46,000 of that money and has never accounted for the amount removed or the $52,000 remaining till this day. Chase also did not consider Shiheiber having paid more toward the mortgage than her required payments.

Property taxes were not paid, because they knew they were responsible to pay the taxes from the mortgage payments. https://smartasset.com/mortgage/property-taxes-included-in-mortgage-payments). *In fact, the FHA requires it.*

Chase used the taxes as an excuse against Shiheiber. Even in their statement sent after filing the second notice of default on March 2, 2010, there was no mention of taxes owed.

Recording the Assignments must be made before any bank is allowed to file a notice of default and a notice of sale against a borrower's property. No Assignment of a Deed of Trust or an Assignment of a Trustee was ever

recorded on any of the three properties. They were recorded after.

In addition, the court ignored the IRS letter showing that Appellant had no liens for any years owed to IRS, and the IRS publication showing that IRS sued JPMC and acknowledged that the US Trust documents are Void.

Documents that Shiheiber received from the IRS showed that she had no liens for any years owed. (See Motion to Augment Filed in Court of Appeal, Document 3). Chase's did not rebut these record facts. 10 RT 1155 [Shiheiber learned from IRS agent that they did not levy on account]; 10 RT 1158. Shiheiber testified at a deposition that Chase told her that the account was levied by the IRS. This was also mentioned in the Chase Customer service logs. There was no notice of levy from the IRS and Chase's argument to the contrary is contrived. 10 RT 1155;10 RT 1158.

Shiheiber had $98,000.00 in an account at Chase, with a $46,000.00 removal of funds by Chase with no explanation for the missing funds, to date. Motion to Augment, Document 4. Instead, Chase filed two notices of default against the properties without ever allowing a 120 day period to elapse because he knew Chase couldn't come up with the payoff of the original loan with Washington Mutual bank. 9 RT 776. They withdrew the $224,000.00 out of her Chase checking account to make it look like she was not paying her mortgage payments. 10 RT 980, 1001, 1020, 1146, 1150. Chase also ignored a

separate escrow account in which Shiheiber originally had $99,000 in back-up funds in case of emergency. 10 RT 1067. Chase removed $46,000 of that money and has never accounted for the amount removed or the $52,000 remaining till this day. Chase also did not consider Shiheiber having paid more toward the mortgage than her required payments.

A loss mitigation which should be sent to the borrower of the loans a minimum of 37 servicing days before the foreclosure sale happens. Chase never sent a loss mitigation agreement. They just kept filing notices of default and notices of sale against the three properties each time Shiheiber tried to refinance them, and they received a payoff demand from the potential new lender.

This destroyed Shiheiber's credit. Chase would repeatedly engage in filing these notices against Shiheiber's properties to ensure that they financially precluded her from refinancing my properties so they would not be able to give the original payoff of the loans. They slandered her name and humiliated her with great harm, and eventually took all three properties wrongfully and illegally.

This illegal and fraudulent conduct should not be condoned by this Court. Certiorari should be granted to address it.

CONCLUSION

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

Dated: December 30, 2022

Respectfully Submitted,

/s/ Hanan Shiheiber