

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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GEORGE MATTHEW CULBERTSON, ET AL.,  
*Petitioners*,  
v.

WELLS FARGO USA HOLDINGS, INC., ET AL.,  
*Respondents*,

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On Petition for a Writ of Certiorari to the First  
Judicial District Court in and for Caddo Parish,  
Louisiana, and the Louisiana Second Circuit Court  
of Appeal, and the Louisiana Supreme Court

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PETITION FOR WRIT OF CERTIORARI

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## **I. QUESTIONS PRESENTED**

The Applicants put forth the following Questions Presented for this Court's review, to wit:

1. Does 50 U.S.C.A. §3936 apply to toll a state statute of limitations on a state law foreclosure action where (a) a servicemember voluntarily filed a bankruptcy petition, (b) voluntarily turned his property over to the trustee for administration, (c) the property was abandoned by the trustee for the express purpose of foreclosure, after a contradictory hearing, and (d) the servicemember did not seek any protections of the Servicemembers Civil Relief Act in the bankruptcy court?
2. Does 50 U.S.C.A. §3936 apply to toll a state statute of limitations on a pre-petition debt where the servicemember has been discharged in a Chapter 7 bankruptcy proceeding?

## **II. LIST OF PARTIES TO THE PROCEEDINGS BELOW**

The parties to the proceedings below are the same parties as are listed in the caption of this case, and the caption of the case below. Those parties are

Petitioners, George Matthew Culbertson and Sarah Elizabeth Culbertson.

Defendant and Respondent, Wells Fargo,  
N.A.<sup>1</sup>

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<sup>1</sup>

Multiple Wells Fargo entities were sued due to the uncertainty of who actually held the note on the date suit was filed. However, at all stages of this proceeding, Wells Fargo, N.A. has declared itself to be the proper defendant in this matter.

### **III. LIST OF PROCEEDINGS IN COURTS BELOW**

1. Caption of Case: "GEORGE MATTHEW CULBERTSON, ET AL VS WELLS FARGO USA HOLDINGS INC, ET AL,"  
Docket Number: No. 614,421- C.  
Court: 1st Judicial District Court in and for Caddo Parish, Louisiana.  
Date of Judgment: May 26, 2021.
2. Caption of Case: "GEORGE MATTHEW CULBERTSON AND SARAH ELIZABETH CULBERTSON VS WELLS F A R G O H O M E MORTGAGE, INC., STEVE RANNEY, and MATTHEW KRUEGER"  
Docket Number: No. 54,545-CA.  
Court: Louisiana Second Circuit Court of Appeals.  
Date of Opinion: June 29, 2022.
3. Caption of Case: "GEORGE MATTHEW CULBERTSON AND  
iii

SARAH ELIZABETH  
CULBERTSON VS.  
WELLS FARGO HOME  
MORTGAGE, INC., STEVE  
RANNEY, and MATTHEW  
KRUEGER”

Docket Number: 2022-C-01159.

Court: Louisiana Supreme Court.

Date of Opinion: November 01, 2022.

#### **IV: TABLE OF CONTENTS**

	<u>Page</u>
Questions Presented . . . . .	i
List of Parties to the Proceedings Below . . . . .	ii
List of Proceedings in Courts Below . . . . .	iii
Table of Contents . . . . .	iv
Table of Authorities . . . . .	vi
Citations of Opinions and Orders Entered . . . . .	2
Statement of Jurisdiction . . . . .	2
Listing of Constitutional Provisions, Treaties, Statutes, Ordinances and Regulations Involved in the Case . . . . .	5
Statement of the Case . . . . .	9
Reasons and Argument . . . . .	12
Conclusion . . . . .	20
Appendix . . . . .	1a
App. A - Judgment of Louisiana Second Circuit Court of Appeals rendered June 29, 2022 . . . . .	1a
App B. - Judgment of Louisiana Second	

Circuit Court of Appeals rendered June 29, 2022 .....	17a
App. C - Judgment of trial court entered May 26, 2021 .....	21a
App. D - U.S. Bankruptcy Court Discharge of Joint Debtors .....	27a
App. E - U.S. Bankruptcy Court Order Granting Relief Of Automatic Stay .....	32a
App. F - Lousiana Supreme Court denial dated November 1, 2022 ...	34a
App. G - U.S. Bankruptcy Court Motion To Lift Stay And For Abandonment .....	36a
App. H - <i>Copper Creek (Marrysville) Homeowners Association v. Kurtz, et al., 82083-4-I (Wa. App. Div 1, 1/18/22), 508 P.3d 179</i> .....	40a

## V: TABLE OF AUTHORITIES

	<u>Page</u>
<i>Cases Cited</i>	
<i>Copper Creek (Marrysville) Homeowners Association v. Kurtz, et al</i> 82083-4-I (WA. App. Div 1, 1/18/22), 508 P.3d 179 .....	4, 4, 12. 15, 17
<i>Culbertson v. Wells Fargo USA Holdings, Inc., et al.</i> , 614421-C, First Judicial District Court, Parish of Caddo, State of Louisiana .....	9
<i>Culbertson v. Wells Fargo USA Holdings, Inc., et al.</i> , 2022-C-01159 (La. 11/1/22), 2022 La. LEXIS 1818. ....	1
<i>Culbertson v. Wells Fargo USA Holdings, Inc., et al.</i> , 54545-CA (La. App. 2 Cir. 6/29/22), 342 So.3d 452 .....	1
<i>Delappe v. Murray</i> , 51 A. 2d 638 (Comm. Pa. 1994) .....	13, 14
<i>Johnson v. Home State Bank</i> , 501 U.S. 78, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991) .....	5, 17
<i>Lester v. United States</i> , 487 F.Supp. 1033 (N.D. Tex. 1980) .....	14



## VI. CITATIONS OF OPINIONS AND ORDERS ENTERED

1. *Culbertson v. Wells Fargo USA Holdings, Inc., et al.*, 2022-C-01159 (La. 11/1/22), 2022 La. LEXIS 1818.
2. *Culbertson v. Wells Fargo USA Holdings, Inc., et al.*, 54545-CA (La. App. 2 Cir. 6/29/22), 342 So.3d 452.
3. *Culbertson v. Wells Fargo USA Holdings, Inc., et al.*, District Court ruling, unpublished, dated April 26, 2021.
4. *Culbertson v. Wells Fargo USA Holdings, Inc., et al.*, District Court judgment, unpublished, dated May 21, 2021.

All other orders were orders of the trial court and are found in the trial court record.

## VII. STATEMENT OF JURISDICTION

Petitioners seek review of the Louisiana State trial court order ruling in favor of Wells Fargo,<sup>2</sup> its companion opinion by the Second Circuit Court of Appeal, upholding that decision, and the denial of Petitioners' writ application to the Louisiana Supreme Court. The state trial court order was entered on May 26, 2021. That decision was appealed to the Louisiana

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<sup>2</sup>

Wells Fargo refers to Wells Fargo, N.A. in this proceedings.

Second Circuit Court of Appeals and affirmed by that court on June 29, 2022. The application for writ of certiorari or review to the Louisiana Supreme Court was denied on November 1, 2022. Plaintiffs invoke this Court’s jurisdiction under 28 U.S.C. § 1257, having timely filed this Petition for Writ of Certiorari within ninety days of the Louisiana Supreme Court’s judgment.

This case involves the intersection of the Servicemembers Civil Relief Act (50 U.S.C.A. 3901, et seq.) (the “SCRA”), the Bankruptcy Code (11 U.S.C.A. 101, et seq.) (the “Code”), and the Louisiana law of prescription. Undersigned counsel believes the issue to be *res nova* in this Court, and no other federal or territorial court decisions were found by undersigned counsel on the issue at bar. The Louisiana state trial court and the Louisiana Second Circuit Court of Appeal found that 50 U.S.C.A. §3936 (“Section 3936”) was applicable to toll the state statute of limitations on the note at issue, after the property securing that note was abandoned by the Bankruptcy Court for the specific purpose of foreclosure. Notably, the servicemember, a Petitioner herein, filed a voluntary petition under the Code, voluntarily turned over his property to the Trustee for administration, and did not object to the lifting of the bankruptcy stay and abandonment of the immovable property at issue for purposes of foreclosure. Nor did the service-member seek any protection under the SCRA in the bankruptcy court.

The Louisiana state courts further found Section 3936 applicable to toll the state statute of limitations,

despite the Bankruptcy discharge of the Servicemember from personal liability on the specific pre-petition debt at issue. The Louisiana state courts made these decisions in the face of the undisputed facts of this case. The Louisiana Supreme Court, on a writ of discretionary review, denied the opportunity to review this case.

Petitioners believe that the SCRA must be interpreted and applied in a uniform basis throughout the 50 states and all of the territories. Here, the Louisiana state courts have applied Section 3936 to toll the statute of limitations, despite the direct participation of the Bankruptcy Court and its concomitant effects on the issues.

The Louisiana state court decisions stand in stark contrast to the recent decision of the courts of the state of Washington. See *Copper Creek (Marrysville) Homeowners Association v. Kurtz, et al.*, 82083-4-I (Wa. App. Div 1, 1/18/22), 508 P.3d 179, App. H p., 40a. That decision was published during the state court appeal of the case at bar, and a copy of the decision was provided the Louisiana Second Circuit Court of Appeal and the Louisiana Supreme Court. Both of those Louisiana courts completely ignored the reasoning applied in *Copper Creek*. The Washington state opinion follows the arguments of Applicants, stating, in pertinent part, as follows:

A. The SCRA Tolled the Statute of Limitations on Enforcement of the Debt

Selene/Wilmington tried to enforce the

terms of the note as secured by the DOT through nonjudicial foreclosure which prompted Copper Creek to bring the action to quiet title. The trial court concluded that the SCRA tolling provision did not apply to the foreclosure action, which allowed the statute of limitations to run on the DOT.

The SCRA tolls statutes of limitations in lawsuits involving servicemembers.

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

50 U.S.C. § 3936(a).

Shawn appears to have defaulted on the note in 2008 or 2009. The parties do not dispute that Shawn was an active duty servicemember until at least September 2020. As a result, the SCRA tolled any court action involving Shawn during his service. 50 U.S.C. § 3936(a). ***Bankruptcy discharge extinguished Shawn's***

*personal liability on July 13, 2011.*  
See Johnson v. Home State Bank, 501 U.S. 78, 82-83, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991). *Without Shawn's personal liability, the debt, as evidenced by the note, was no longer enforceable against a servicemember. Without a servicemember's involvement, the SCRA ceased to toll the statute of limitations. As of July 14, 2011, the six year statute of limitations began running on enforcement of the unpaid installment.* See id. at 84, 111 S. Ct. 2150. Emphasis added.

The federal issues in this case were raised in the state trial court and specifically formed part of the dispositive motions that were filed in the Louisiana trial court. The federal issues were raised in a timely fashion and were critical to the disposition of this case in the Louisiana courts.

**V I I I .    L I S T I N G    O F  
CONSTITUTIONAL PROVISIONS  
TREATIES STATUTES ORDINACES  
AND REGULATIONS INVOLVED IN  
THE CASE**

**50 U.S.C. §3901, et seq.**

**50 U.S.C. §3918:**

(a) In general

A servicemember may waive any of the rights and protections provided by this chapter. Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following:

(1) The modification, termination, or cancellation of—

(A) a contract, lease, or bailment; or

(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the

nature of a mortgage.

(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that—

(A) is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.

**50 U.S.C. §3936:**

(a) Tolling of statutes of limitation during military service

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court, or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or *against the servicemember or the servicemember's heirs, executors, administrators, or assigns.*

(b) Redemption of real property

A period of military service may not be included in computing any period

provided by law for the redemption of real property sold or forfeited to enforce an obligation, tax, or assessment.

(c) Inapplicability to internal revenue laws

This section does not apply to any period of limitation prescribed by or under the internal revenue laws of the United States. Emphasis added.

**11 U.S.C. §108(c):**

.....  
(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

**11 U.S.C. §524(a)(2):**

(a) A discharge under this title –

.....

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived;

.....

**11 U.S.C. §554:**

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and

after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

## **IX. STATEMENT OF THE CASE**

The action at bar was an action brought to declare the ownership of certain immovable property located in Caddo Parish, Louisiana which property bears the municipal address of 202 Leland Drive, Shreveport, Louisiana 71105, “the property herein” of the civil trial entitled “*George Matthew Culbertson, et al. v. Wells Fargo USA Holdings, Inc., et al.*” number 614421-C on the docket of the First Judicial District Court in and for Caddo Parish, Louisiana, Honorable Michael Pitman presiding. Applicants filed the action on February 11, 2019, in Trial Court. The issues surrounding Steve Ranney and Matthew Krueger

resolved extra-judicially by the Petitioners obtaining quit claim deeds. The issues against Wells Fargo U.S.A Holdings, Inc., Wells Fargo, N.A., and Wells Fargo Home Mortgage, Inc. remained. As of the filing of this action, Wells Fargo N.A. admitted that it held the note and accessory mortgage rights. The three Wells Fargo entities are all referred to herein as "Wells Fargo."

In the case at bar, Applicants purchased a home and gave a mortgage for the purchase price to the lender, Wells Fargo. Applicants filed for bankruptcy protection on February 17, 2009, and affirmatively turned the immovable property at issue over to the trustee for administration and/or liquidation - they did not affirm the debt to Wells Fargo. The undisputed facts of this case are as follows:

1. On September 19, 2000, George Matthew Culbertson became active duty in the United States Air Force.
2. On or about May 17, 2008, the Applicants signed a Mortgage with Wells Fargo Financial Louisiana, Inc., using the property located at 202 Leland Drive, Shreveport, Louisiana 71105, as collateral property.
3. Also, on or about May 17, 2008, the Applicants signed an Adjustable-Rate Note with Wells Fargo Financial Louisiana, Inc.

4. On or about February 17, 2009, Applicants filed for relief in the United States Bankruptcy Court, Western District of Louisiana, bearing case no. 09-BK-10462.
5. On or about October 27, 2009, Wells Fargo moved the Bankruptcy Court to lift the automatic stay and to abandon the property for the express purpose of foreclosure. Petitioners did not seek any protections under the SCRA in the bankruptcy court, nor did they object to or hinder the abandonment of the property for foreclosure purposes or the lifting of the automatic stay for that purpose. App. Ex. E p. 29a.
6. On November 16, 2009, the Bankruptcy Court entered an order abandoning the property and to abandon the property for the express purpose of foreclosure. App. Ex. F, p. 33a.
7. On November 2, 2011, Applicants bankruptcy was converted to a Chapter 7 liquidation bankruptcy.
8. On March 5, 2012, Applicants received a discharge under 11 U.S.C.A. 727, a Chapter 7 discharge. App. Ex. G, p. 35a.
9. On April 30, 2012, the bankruptcy case was closed.

10. Mr. Culbertson was transferred to Tampa, Florida, remained on and does still remain on active duty.

Wells Fargo has *never* foreclosed on the property since the entry of the order of abandonment. Applicants have not paid any amount on the note, nor confirmed the debt since bankruptcy. Applicants were discharged from the debt. A bankruptcy discharge operates as an injunction against filing suit against a debtor, personally, on pre-petition debts. 11 U.S.C. §524(a)(2).

The questions before the state courts Court centered on whether the provisions of Section 3936 of the Servicemembers' Civil Relief Act ("SCRA") apply to the facts before this Court. In other words, did Section 3936 "re-attach" to the contract between Wells Fargo and Applicants, after the abandonment of the home by the bankruptcy court for the purpose of foreclosure, and after discharge of the pre-petition debt. The application or non-application of that statute is dispositive as to the Applicants and Wells Fargo.

### **The Actions of the Louisiana Courts.**

In the trial court, Applicants filed a motion for partial summary judgement on the issues regarding the mortgage on the immovable property and the prescription of the note which the mortgage were issued. Wells Fargo filed a cross motion for summary judgement invoking 50 U.S.C. §3936 and asked for the case to be dismissed based on the provisions of that statute. The trial court denied the partial motion for

summary judgement filed by the Applicants, and granted the motion for summary judgement filed by Wells Fargo. The trial court judge expressly relied on 50 U.S.C. §3936 in granting the motion for summary judgement filed by Wells Fargo as its ratio decidendi. See App. Ex. A, p. 1a, 3a.

The state court of appeal agreed with the interpretation of the Trial Court, and likewise both failed to address the bankruptcy implications or the impact of bankruptcy on the application of Section 3936 of the SCRA. In addition, the state court of appeal imposed a waiver requirement, where no such requirement exists. App. Ex. C, 13a-26a. The state court of appeals disregarded the conflicting case of *Copper Creek (Marrysville) Homeowners Association v. Kurtz, et. al.*, 8283-4-I (Wa. App. Div. 1, 1/18/22), 508 P.3d 179 (“Copper Creek”). See App. Ex. C; App. Ex. H, p. 40a-84a.

Applicants filed a writ of review to the Louisiana supreme court. The application for review was based on the assertion that the trial court and the court of appeals had erroneously applied federal law in this matter, particularly Section 3936 of the SCRA. The Louisiana supreme court denied the writ application of Applicants, without comment. See App. Ex. D, 27a-28a.

## **X. REASONS AND ARGUMENT**

The facts of this case are undisputed. The Louisiana trial court, court of appeals, and supreme court have erroneously interpreted and applied Section

3936 of the SCRA to this case. This case involves the intersection of the Servicemembers Civil Relief Act (50 U.S.C.A. 3901, et seq.), the Bankruptcy Code (11 U.S.C.A. 101, et seq.), and the Louisiana law of prescription. In particular, the Louisiana courts found that 50 U.S.C.A. 3936 was applicable to toll the statute of limitations on the note at issue, despite the undisputed facts of this case. The undisputed facts of this case include (1) the voluntary bankruptcy filing of the service member at issue, (2) the turnover of the home at issue to the bankruptcy trustee by the service member for administration, (3) the defendant's request for abandonment for purposes of foreclosure on an accelerated balance of the note, (4) the granting of that request by the Bankruptcy Court, (5) the failure of the service member to request any relief under the SCRA during the bankruptcy process, (6) the discharge of the service member for the debt at issue, and (5) the utter failure of the defendant to foreclose for approximately nine (9) years.

In the courts below, Applicants argued that the prescription began on the note on one of three different occasions - the abandonment of the property for foreclosure by the Bankruptcy Court, the discharge of the Applicants from the debt at issue, or the closing of the bankruptcy case. Applicants argued that Section 3936 of the SCRA did not "re-attach" after the voluntary filing of the bankruptcy, the surrender of the property, and one of the three events described above. The Louisiana courts held otherwise.

**(1). Does 50 U.S.C.A. §3936 apply to toll a state statute of limitations on a**

**state law foreclosure action where (a) a servicemember voluntarily filed a bankruptcy petition, (b) voluntarily turned his property over to the trustee for administration, (c) the property was abandoned by the trustee for the express purpose of foreclosure, after a contradictory hearing, and (d) the servicemember did not seek any protections of the Servicemembers Civil Relief Act in the bankruptcy court?**

The trial court and court of appeals erred in its ruling that the provisions of Section 3936 of the SCRA applied to the facts before the Court. That Statute tolls prescriptive period by or against a service-member, but it does not stop the filing of actions between parties. Once filed, those actions proceed accordingly. Second, the statute does not toll statutes of limitations against the filing of suit against property of a service-member, from which the service-member has been discharged in bankruptcy and which the creditor has received specific authorization on which to foreclose.

The statute at issue governs the tolling of the period for **bringing** an action, **not after** the action has been brought. 50 U.S.C. §3936; *Dellape v. Murray*, 651 A.2d 638 (Comm. Pa. 1994); *Zitomer v. Holdsworth*, 449 F.2d 724 (3<sup>rd</sup> Cir. 1971). Once action has been started, the provisions of Section 3936 no longer apply. Moreover, Section 3936 does not apply to the spouse of the servicemember. *Ray v. Porter*, 464

F.2d 452 (6<sup>th</sup> Cir. 1972); *Lester v. United States*, 487 F.Supp. 1033 (N.D. Tex. 1980).

The case at bar brings a specific set of facts. Here, the servicemember affirmatively filed for relief in the bankruptcy court, surrendered the property at issue to the trustee, and scheduled the debt and asset mortgaged. Wells Fargo appeared and requested that the property be abandoned for the express purpose of foreclosure. The bankruptcy court granted that relief and retained jurisdiction over any claim in excess of the value of the collateral. See App. Ex. F, p. 33a-34a.

It is undisputed that the servicemember voluntarily filed bankruptcy, and it is undisputed that the servicemember did not seek any protections under the SCRA in the bankruptcy court. The claims of Wells Fargo were still part of the bankruptcy, and the effect of the foreclosure was intended to be part of the bankruptcy, with any amounts due remaining after foreclosure to be administered by the Bankruptcy Court as an unsecured claim. App. Ex. F, p. 33a-34a. The bankruptcy court had both personal jurisdiction over Applicants and in rem jurisdiction of the assets of Applicants. Similar to *Dellappe* and *Zitomer*, the legal actions were begun. It is undisputed that Applicant, George Matthew Culbertson, never sought protections under the SCRA in the bankruptcy court.

The issue of SCRA protections was an issue for the bankruptcy court and had to be brought there. Applicants waived all of those rights when it did not re-affirm the debt at issue, when they turned over the property at issue to the trustee for administration, and

when Applicants did not seek any SCRA relief in the bankruptcy court. Those actions, and those decisions not to act, are outright waivers of SCRA rights, on the record, which cannot be again re-claimed. Accordingly, any notion that Section 3936 “re-attaches” to the state law foreclosure action on security for a pre-petition debt is simply nonsense. Applicants were bound by the bankruptcy court orders and could not object to the state court foreclosure proceedings. Nor could they seek SCRA protections at that point, and most certainly not after discharge.

**(2). Does 50 U.S.C.A. §3936 apply to toll a state statute of limitations on a pre-petition debt where the servicemember has been discharged in a Chapter 7 bankruptcy proceeding?**

The SCRA is a federal statute that affects all service members in some way. Applicants believe that the uniform construction of the statute throughout the federal and state courts is important, in order to ensure stability and to ensure that service-members have a clear understanding of how the statutory scheme works so that they can rely on the structure of their interactions with creditors and other third parties. To provide effective relief and protections to both service members and the creditors and other third parties who deal with them on a day to day basis, a uniform application of the statutory scheme is undeniably important.

In the case at bar, the Louisiana courts have  
-18-

determined that Section 3936 applies under the facts of this case, simply because of its plain language. Applicants asserted that it was because of that very language, coupled with the bankruptcy code, which compelled a completely different result. Applicants argued that there were three different points in time to assess whether or not Section 3936 ceased to apply to this case - (1) when the asset was abandoned for the specific purpose of foreclosure, (2) when the debtors (Applicants here) were discharged from the debt under chapter 7, and/or (3) when the bankruptcy case was closed.

During the pendency of the case on appeal, a unanimous three-judge panel of the Washington State court of appeal decided a case entitled *Copper Creek (Marrysville) Homeowners Association v. Kurtz, et al.*, 82083-4-I (Wa. App. Div 1, 1/18/22), 508 P.3d 179. Central to that court's decision was the very issue before this Court - when does Section 3936 cease to apply in the context of bankruptcy? The appellate court of the State of Washington answered:

A. The SCRA Tolled the Statute of Limitations on Enforcement of the Debt

Selene/Wilmington tried to enforce the terms of the note as secured by the DOT through nonjudicial foreclosure which prompted Copper Creek to bring the action to quiet title. The trial court concluded that the SCRA tolling provision did not apply to the foreclosure action, which allowed the statute of

limitations to run on the DOT.

The SCRA tolls statutes of limitations in lawsuits involving servicemembers.

The period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding in a court or in any board, bureau, commission, department, or other agency of a State (or political subdivision of a State) or the United States by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

50 U.S.C. § 3936(a).

Shawn appears to have defaulted on the note in 2008 or 2009. The parties do not dispute that Shawn was an active duty servicemember until at least September 2020. As a result, the SCRA tolled any court action involving Shawn during his service. 50 U.S.C. § 3936(a). ***Bankruptcy discharge extinguished Shawn's personal liability on July 13, 2011.*** See Johnson v. Home State Bank, 501 U.S. 78, 82-83, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991). ***Without Shawn's personal liability, the debt, as evidenced by the note, was no longer enforceable against a servicemember.***

*Without a servicemember's involvement, the SCRA ceased to toll the statute of limitations. As of July 14, 2011, the six year statute of limitations began running on enforcement of the unpaid installment.* See *id.* at 84, 111 S. Ct. 2150. Emphasis added.

Despite being supplied the proper statutory law and cases, including the above citation from Washington state, the Louisiana court of appeal actually stated that: "We find that the appellants have failed to provide support for their contention that the SCRA does not apply to the mortgage at issue. Appellants cannot point to any law or jurisprudence that would provide an exemption to the mandatory tolling provision of the SCRA in these circumstances. Further, it is clear from the record that appellants never executed a waiver of rights form, as required by 50 U.S.C. §3918."

The comments of the Louisiana appellate court completely ignored the citation to *Copper Creek* and that court's analysis. The comments of the Louisiana appellate court ignore the language of Section 3918, and the implications arising from the voluntary bankruptcy of Applicants. Section 3918 of the SCRA reads in pertinent part:

A servicemember *may* waive any of the rights and protections provided by this chapter. Any such waiver that applies to an action listed in subsection (b) of this

section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies. In the case of a waiver that permits an action described in subsection (b), the waiver is effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service. The written agreement shall specify the legal instrument to which the waiver applies and, if the servicemember is not a party to that instrument, the servicemember concerned.

(b) Actions requiring waivers in writing

The requirement in subsection (a) for a written waiver applies to the following

(1) The modification, termination, or cancellation of—

(A) a contract, lease, or bailment; or

(B) an obligation secured by a mortgage, trust, deed, lien, or other security in the nature of a mortgage.

(2) The repossession, retention, foreclosure, sale, forfeiture, or taking possession of property that—

(A) is security for any obligation; or

(B) was purchased or received under a contract, lease, or bailment.....  
Emphasis added.

As noted by the language of the statute, it is permissive, and no such waiver is required. Once the property is turned over to the bankruptcy trustee for administration and abandoned for purposes of foreclosure, and once the service member is discharged from personal liability, there is clearly no need for a written waiver.

Once the servicemember Applicant was discharged from the pre-petition debts, there was no longer any action "...against a servicemember..." as contemplated under the SCRA. Accordingly, the tolling statute ceased to apply altogether to those claims.

The ruling of the Washington appellate court is directly at odds with the rulings of the Louisiana courts in this case. Under the Louisiana court rulings, Section 3936 "re-attaches" to toll prescription on any pre-petition debt for a service member discharged in bankruptcy, as soon as the asset is abandoned, or the bankruptcy is closed, so long as that service member is still on active duty.<sup>3</sup> The Louisiana and Washington state holdings create a split in the case law construing

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<sup>3</sup>

It is undisputed that George Matthew Culbertson was on active duty at the time the home at issue was purchased and financed, and has been on active duty since that time. Mr. Culbertson is still on active duty as of the time of the writing of this application.

the SCRA and the bankruptcy act.

The position of the Louisiana courts is, quite frankly, untenable. Applicants hold no personal liability on the pre-petition debt as they have been discharged. Section 3936 clearly only applies to toll prescription against a "...servicemember, or the servicemember's heirs, executors, administrators, or assigns." That is a personal action. For Section 3936 of the SCRA to apply, there **must be a viable action against a "servicemember."** Once the servicemember is discharged, there is no longer any personal action available *to* anyone *against* the servicemember individually. Applicants received a discharge and accordingly, there is no viable action for or against Applicants, or their heirs' administrators or assigns. At that point, any action on the debt is *in rem*.

The Louisiana courts are simply wrong in their statutory and codal analyses. The decisions of those Louisiana courts turn Section 3936 of the SCRA into a blunt object that can only be used by a creditor. The application of the statute, and Wells Fargo's reading of the statute, actually frustrates the purposes of the SCRA. The purpose of temporarily suspending such actions which may adversely affect the servicemember's civil rights, had been achieved when the *servicemember* filed the bankruptcy. Moreover, the servicemember cannot devote his entire energy to the national defense if he must handle continuing legal problems regarding naked title to land. Title to the land remaining in the name of the servicemember for an inordinate amount of time simply exposes that

servicemember to post-petition claims of third parties (damages from accidents on property and the like), governmental authorities (nuisance claims for properties that fall into disrepair or that require maintenance), and continuing problems in dealing with property taxes and the like. The reading of Wells Fargo is antithetical to the purposes of the statute.

There is no factual dispute about the matters that occurred, their timing, or the matters that did not occur (the foreclosure). Applicants believe that the uniform construction of the SCRA is important, and that this Court should grant this writ to make a determination of when Section 3936 of the SCRA should apply in a case also involving a bankruptcy. Applicants are seeking to have the trial court decision and the opinion of the Louisiana court of appeal overturned, and have this matter remanded to the trial court, for reconsideration of the issues in light of this Court's reversal.

## **XI. CONCLUSION**

For all of the foregoing reasons, this Court should grant this application for certiorari and review and reverse the decisions of the Louisiana courts, and remand this matter to the state district court for further proceedings consistent with the ruling of this Court.

Respectfully submitted,

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