

In The
Supreme Court of the United States

RAFAEL TREVINO,

Petitioner,

v.

U.S. BANK NATIONAL ASSOCIATION
AS LEGAL TITLE TRUSTEE FOR
TRUMAN 2016 SC6 TITLE TRUST,

Respondent.

**On Petition For Writ Of Certiorari
To The Appellate Court Of Connecticut**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the Petitioner rightly asserts that his procedural due process rights have been violated such that review by this Court is proper.

Whether the Petitioner has set forth a valid ground on which review by this Court is proper.

CORPORATE DISCLOSURE STATEMENT

Respondent U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust, by and through its attorneys, Bendett & McHugh, P.C., files the following Corporate Disclosure Statement:

1. U.S. Bank, N.A. is a federally regulated bank that is overseen by the OCC. It is a wholly owned subsidiary of U.S. Bancorp which is a publically traded entity.
2. No other entity owns more than 10% of U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust.

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INTRODUCTION

U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust foreclosed on a mortgage securing a debt owed by a borrower based on borrower's failure to pay required amounts due under the note. The State Trial Court, and court with original jurisdiction, entered a Judgment of Strict Foreclosure in favor of the foreclosing Plaintiff. The Judgment of Strict Foreclosure was affirmed by the Connecticut Appellate Court which remanded the matter back to the State Trial Court solely for the purpose of resetting the law days.¹ The Defendant, Rafael Trevino, filed a Petition for Certification with the Supreme Court of Connecticut. Said petition was denied.

Trevino now seeks review of the denial of the Petition for Certification by the Supreme Court of Connecticut. The Connecticut Supreme Court's denial of the Petition is not within this Court's certiorari jurisdiction under 28 U.S. Code § 1257. The question presented is strictly one of state court law, it does not present a United States Constitutional question, nor does it represent a split of authorities or a pressing

¹ "Strict foreclosure is the normal method of foreclosure only in Connecticut and Vermont."⁵ (Internal quotation marks omitted.) *Id.*, at 369. When a strict foreclosure rather than a sale is ordered, it entails a foreclosure judgment in favor of the mortgagor that results from a proceeding against the debtor and leaves the mortgagor with a right to redeem within a specified time frame, ending with the law day. *See Citicorp Mortgage, Inc. v. Weinstein*, 52 Conn.App. 348, 350, 727 A.2d 720 (1999).

public interest issue and therefore should not be reviewed by the highest Court in the land.

STATEMENT OF THE CASE

U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust commenced the underlying action by way of complaint dated January 22, 2020 to foreclose a mortgage, securing a debt, encumbering real property located at 16 Hedge Brook Lane, Stamford, Connecticut. The appearing Defendant in this action is Rafael Trevino, who has an interest in the property and recoded the deed on the Stamford Land Records on August 25, 2005. Trevino was in default of said note and mortgage by virtue of failing to remit the contractually provided payments to Plaintiff.

The Defendant filed an amended answer containing several special defenses² on November 11, 2020. The Plaintiff moved for summary judgment which the State Trial Court declined to enter. The Plaintiff replied to the special defenses and claimed the matter to the trial list. The Plaintiff had previously served on the Defendant requests for admission to which the Defendant failed to answer. In accordance with Connecticut procedure, Plaintiff thereafter filed an intent to rely on admissions of the Defendant and moved for summary judgment. After considering the Defendant's

² Affirmative defenses in Connecticut State Court are styled as "Special Defenses."

arguments of a fraudulent loan and the Plaintiff's response thereto together with the evidence of the Plaintiff in support of its *prima facie* case, the State Trial Court entered summary judgment in favor of Plaintiff as to liability only on September 29, 2021. Judgment of Strict Foreclosure thereafter entered in favor of the Plaintiff on February 2, 2022.

An appeal followed. Connecticut's intermediary court of appellate jurisdiction affirmed the State Trial Court's entry of judgment *per curiam* by way of order dated September 13, 2022. The Defendant moved to reargue this decision *en banc* on September 14, 2022. The Connecticut Appellate Court denied Defendant's motion for reconsideration by way of order dated October 19, 2022. During the pendency of the Defendant's motion for reconsideration the Plaintiff moved to terminate the appellate stay to which the Defendant objected. The State Trial Court denied the Plaintiff's motion to terminate appellate stay and sustained the Defendant's objection thereto on March 30, 2022.

Defendant then, following the denial of the motion for reconsideration *en banc*, filed a Petition for Certification to the Connecticut Supreme Court. The Connecticut Supreme Court denied Defendant's petition on January 3, 2023. After the Connecticut Supreme Court's denial of Defendant's Petition for Certification, Defendant filed a Motion to Stay Pending Decision by the U.S. Supreme Court per Connecticut Practice Book

§ 71-7 on January 10, 2023. The Trial Court denied the motion on that same day.

REASONS TO DENY PETITION

I. This Case Is a Flawed Vehicle for Determining Due Process Rights

The Fifth Amendment to the United States Constitution (incorporated and applied to the states through the Fourteenth Amendment) provides a right of due process, which includes the right of notice and the opportunity to be heard. “The fundamental requisite of due process of law is the opportunity to be heard.” *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 783 (1914). Specifically, Trevino’s claims essentially allege a deficiency in procedural due process. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections . . . But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950). *See also* *Robinson v. Hanrahan*, 409 U.S. 38, 39-40, 93 S. Ct. 30, 31 (1972).

Trevino attempts to argue that he was fundamentally denied his procedural due process rights due to

what he claims was the failure of the State Trial Court to properly consider his claims related to predatory lending. “Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits . . . What the Constitution does require is ‘an opportunity . . . granted at a meaningful time and in a meaningful manner,’” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added), “for [a] hearing appropriate to the nature of the case, *Mullane v. Central Hanover Tr. Co.*, *supra*, at 313.” *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 786 (1971). Trevino had the opportunity to be heard: he filed a timely appearance in the matter and received multiple hearings, including a hearing on the claims raised in his answer and special defenses at the state court level. He was also provided, and availed himself of, the opportunity to appeal to the Appellate Court of Connecticut, as well as the opportunity to file a Petition for Certification to the Supreme Court of Connecticut. The Connecticut Appellate Court affirmed the trial court’s decision *per curiam*, and remanded the case solely for the purpose of setting new law days. The Connecticut Appellate Court further denied Trevino’s motion for reconsideration *en banc*. The Connecticut Supreme Court denied Trevino’s Petition for Certification on Appeal from the Connecticut Appellate Court. Not only has Trevino completely exhausted all possible appeals for these proceedings, his constitutionally given due process rights have been completely satisfied.

Furthermore, as the allegations underlying Trevino's claimed denial of due process and which claims he now seeks that this Honorable Court relitigate are entirely controlled by Connecticut State laws. Indeed, Connecticut courts have set forth that, in order to succeed on a special defense of predatory lending the pleading party must establish:

[The defendants] did not merely rely on a bald assertion that the original plaintiff had engaged in "predatory lending" practices. Instead, in twenty-seven paragraphs, they set forth allegations in support of that purported special defense. *See* footnote 3 of this opinion. Notably, the defendants set forth detailed allegations concerning the financial circumstances of David Aubut at the time of the making of the loan at issue. Among other allegations, the defendants alleged that David Aubut's income, the sole source of income for the defendants' household, was \$36,000 per year. His take-home pay was \$1950 per month. He owed \$45,000 in credit card debt and \$132,000 on an existing mortgage. The defendants alleged, in relevant part, that monthly payments on the new loan were approximately \$1400 per month, which comprised more than 70 percent of David Aubut's take-home pay, leaving him approximately \$550 per month to pay other expenses. The defendants alleged that "[a]t the time of the subject loan, [David Aubut] was insolvent within the definition of the United States Bankruptcy Code."

Apart from these specific allegations concerning David Aubut's financial situation at the time of the loan, the defendants alleged that the original plaintiff "had offered [David Aubut] a mortgage on his principal residence that it knew or should have known [he] could not afford" and "knew or should have known that at the time this loan was made [David Aubut] was insolvent." The defendants alleged that "[t]he subject loan was predatory in nature and destined to fail from [its] inception."

Bank of America, N.A. v. Aubut, 167 Conn.App. 347, 377-378, 143 A.3d 638 (2016). Moreover, in support of the defendants' claim in *Aubut*, "the defendants provided the court with an affidavit of David Aubut, consisting of thirty-two numbered paragraphs, in which he made factual averments concerning the making of the loan as well as his financial situation at the time of the making of the loan. These averments supported the allegations made in his special defense." *Id.* at 382. Trevino's special defenses differ significantly from the successful defense set forth in *Aubut* and, significantly, Trevino both failed to file an affidavit in support of the allegations raised in the special defense and made admissions upon which the Plaintiff relied in obtaining summary judgment as to liability.

While Trevino argues that the State Trial Court, Connecticut Appellate Court and Connecticut Supreme Court were incorrect in not denying the Plaintiff judgment based on his claims of predatory lending

and misapplication of payments, such argument does not equate to the denial of due process.

II. Defendant Has Not Submitted Any Reason Why Further Review of the Case Is Necessary, Especially Review in the United States Supreme Court

Trevino has not provided any reasoning, substantial, factual, legal or otherwise, as to why further review of his case is necessary. He has not put forth any claims that mitigate or excuse the fact that he completely failed to submit any evidence or any legitimate legal authority that he relied on to the Trial Court. Trevino fails to overcome the need for this Court to have been presented a Constitutional Federal question for review and couches a purely state court issue as a Fourteenth Amendment challenge. Connecticut courts have already ruled in favor of the Plaintiff on Trevino's claims. Indeed, in his Petition of Certiorari, Trevino has raised nearly identical claims as he did in his Petition for Certification to the Connecticut Supreme Court and in this brief to the Connecticut Appellate Court. While the wording of the claims are not identical the substance of the claims is the same as those presented, considered and decided in favor of the Plaintiff by both the Connecticut Supreme Court and Connecticut Appellate Court.

Although banks are regulated under federal law, they have always been subject to the laws of the state in which they do business and the only time state law

is preempted, is if the operation of the state law expressly conflicts with the laws of the United States. *Normand Josef Enters. v. Conn. Nat'l Bank*, 230 Conn. 486, 517, 646 A.2d 1289, 1304-1305 (1994), *see also* *Nat'l Bank v. Commonwealth*, 76 U.S. (9 Wall.) 353, 362 (1869) (They [the banks] are subject to the laws of the State, and are governed in their daily course of business far more by the laws of the State than of the nation. All their contracts are governed and construed by State laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on State law.) *See also* *McClellan v. Chipman*, 164 U.S. 347, 356-357, 17 S. Ct. 85, 87 (1896); *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 11, 127 S. Ct. 1559, 1567 (2007); *Epps v. JP Morgan Chase Bank, N.A.*, 675 F.3d 315, 324 (4th Cir. 2012); *Nat'l City Bank v. Cont'l Nat'l Bank & Tr. Co.*, 83 F.2d 134, 138 (10th Cir. 1936).

Connecticut General Statutes § 49-1 and § 49-15 govern foreclosure proceedings and remedies under Connecticut jurisdiction. Section 49-1, in relevant part, bars further action in the debt and § 49-15 proscribes the proper opening of judgments of strict foreclosure. No federal law established proscribes an equitable process or remedy, as established within the Connecticut General Statutes, thus foreclosure proceedings remain a question for the state courts, not courts within federal jurisdiction. In fact, this Court has recently recognized foreclosures as being the sole province of state law. *See Obduskey v. McCarthy & Holthus LLP*, 139 U.S. 1029, 1033-1035 (2019).

There are no conflicting Connecticut state laws that would furnish an appropriate appeal nor has Trevino presented any Connecticut state laws that would supplement his argument. The claims raised by Trevino were all adjudicated in favor of the Plaintiff and Trevino can, and has, presented no Connecticut statutory or caselaw which would contraindicate the correctness of the decisions of both the Connecticut Appellate Court and the Connecticut Supreme Court. Indeed, Connecticut law is clear on the issue – Trevino failed to set forth the elements necessary in order to succeed on the special defenses raised and thus judgment of strict foreclosure properly entered in favor of the Plaintiff.

Trevino simply resubmits the same claims he made in his Connecticut Appellate Court brief as well as his Petition for Certification to the Supreme Court of Connecticut. He points to nothing in the record which can be construed as evidence; nor even any facts which would tend to support his claims. Therefore, these arguments do not amount to proving facts with evidence which would limit or change Trevino's rights and should not provide a basis for certiorari.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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