



NO: 23-1284

IN THE
SUPREME COURT OF THE UNITED STATES

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Jose-Franklin: family [Arau],
Petitioner

v.

Rocket Mortgage, LLC et. al.,
Respondent.

-----oOo-----

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals for the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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Brief of Petitioner Jose-Franklin: family [Arau]

Jose-Franklin: family [Arau], Pro Per

On the county at Large, Alameda
c/o: 1227 Neilson Street,
Berkeley, California [94706]
Telephone: 510-542-6005

QUESTIONS PRESENTED FOR REVIEW

The UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA errored in dismissing Petitioner's discharge tender to settle and close the mortgage liability at issue in cause no: 3:22-cv-07715-JSC for the reasons below:

1. Can the identified "Holder" of the Securitized mortgage debt avoid discharge of said debt when bonds are issued in accord with Title 48 C.F.R. Ch. 1, Part 53.228?
2. Can the court dishonor discharge when bonds are issued in accordance with Title 48 C.F.R. Ch. 1, Part 53.228 by Petitioner (Jose-Franklin: family [Araul]) to discharge the alleged mortgage debt?
3. Can the court ignore the nature of the Bills of Exchange Act as it applies to discharging securitized mortgage debt in accord with Title 48 C.F.R. Ch.1, §53.228?
4. Is it possible to accomplish a quiet title action without court due process?
5. Can Respondent, who sold the mortgage debt to third parties, maintain standing to foreclose when the mortgage debt was discharged in accord with Title 48 C.F.R. Ch. 1, §53.228?
6. Can a party who is not the securitized mortgage debt "Holder" perform a foreclosure action, i.e. "Rocket Mortgage, LLC et. al., Respondent?
7. There exists a question as to whether the conduct of respondent and the lower court have violated the U.S. Constitution, Art 1, S8, Cl. 17, Commerce Clause when blocking the ability to tender bonds (U.C.C. §2-511) to discharge commercial paper liabilities in addition to the U.S. Constitution, Art 3, S2, Cl. 1, Judicial Clause by and through Title 28 U.S.C. §3002 (4) and U.C.C. §1-201(2).

8. Can a “fiscal agent of the United States [Treasury],” pursuant to Title 12 USC §266, evade fiduciary banking duty to discharge and block petitioner’s access to banking in addition to violating the commerce clause?

9. There exists a question for the court to determine whether the use of bonds in accord with Title 48 CFR Ch. 1 §53.228 being dishonored in accord with U.C.C. §3-503(1)(c) by both respondent and the lower courts is a proper activity in light of the fact that said parties operate within and use bonds in their everyday business relations through the United States Treasury, Tax and Loan (TT&L) banking computer portal system.

10. Can the UNITED STATES and its “fiscal agents of the United States [Treasury],” (12 USC §266) violate International Treaty agreement provisions for The United Nations Convention on Contracts for the International Sale of Goods (CISG)?

LIST OF PARTIES

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

1.) Jose-Franklin: family [Araul],

Petitioner

2) Rocket Mortgage, LLC FKA Quicken Loans, LLC

U.S. Treasury Fiscal Agent, 12 USC §266

The Corporation Company

40600 Ann Arbor Rd., East Suite 201

Plymouth Michigan [48170-4675]

[NOTE: Rocket Mortgage, LLC has stated that they have no interest, see Appendix C, ECF 30]

3) Francisco Alicea dba U.S. Treasurer

c/o: DEPARTMENT DE HACIENDA

P.O. BOX 9024140

SAN JUAN, PUERTO RICO [00902-4140]

4) Janet Yellen dba Secretary of the Treasury (United States)

1500 Pennsylvania Avenue, NW

Washington, District of Columbia [20220]

5) U.S. Treasury Fiscal Agent, 12 USC 266

Frank La Salla dba Director/Chairman,
Depository Trust & Clearing Corporation
55 Water Street
New York, New York [10041]

6) U.S. Treasury Fiscal Agent, 12 USC 266

Mr. Cooper, care of Lakeview Servicing
4425 PONCE DE LEON BLVD MS 5-251
CORAL GABLES, Florida [33146]

7) U.S. Treasury Fiscal Agent, 12 USC 266

Nomura Securities International, Inc.,
Prospectus Department.
Worldwide Plaza, 309 West 49th Street, 9th Flr.

New York, New York [10019-7316]

8) U.S. Treasury Fiscal Agent, 12 USC 266

Midtown Center RE: Mortgage Backed Securities (MBS)
Fannie Mae, Granite Park VII
5600 Granite Pkwy
Plano, Texas [75024]

- 9) U.S. Treasury Fiscal Agent, 12 USC 266
Cenlar FSB Corporate Headquarters
c/o: Cathy L. Granger, WOLFE & WYMAN, LLP
2212 Dupont Drive
Irvine, California [92612-1525]
- 10) U.S. Treasury Fiscal Agent, 12 USC 266
Mortgage Electronic Registration Systems, Inc.
aka MERS, Inc., aka MERSCORP,
aka MERSCORP Holdings, Inc.
1818 Library Street, Suite 300
Reston, Virginia [20190-6280]
- 11) UNITED STATES dba UNITED STATES OF AMERICA
Stephanie M. Hinds dba U.S. Attorney
Federal Courthouse, 450 Golden Gate Avenue
San Francisco, California [94102]
- Respondent(s)

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Special Bond

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

Petitioner, Jose-Franklin: family [Araul] respectfully presents his Petition for a Writ of Certiorari before judgment to review a decision of the United States Court of Appeals for the Ninth Circuit. Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below:

Statement of Subject Matter and Appellate Jurisdiction

FEDERAL COURT JURISDICTION OPINIONS

The opinion of the United States Court of Appeals for the Ninth Circuit for which this petition is filed is reported of Cause No. 23-16137, was generated as a result of a void judgment in the UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA. [Decision is show in Appendix A]

For the case from the Federal Courts:

The original complaint, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, for case number 3:22-CV-07715-JSC, was dismissed on August 21, 2023, Appendix A. The Notice of Appeal on case number 3:22-CV-07715-JSC was returned by the United States Court of Appeals for the Ninth Circuit, case number 23-16137, was dismissed on January 30, 2024, Appendix B.

1. The opinion of the UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, appears at Appendix A to the petition and is

[] reported at _____; or

[] has been designated for publication but is not yet reported; or

[X] is unpublished

For the case from the Appellate Court:

2. The opinion of the United States Court of Appeals for the Ninth Circuit appears at

Appendices B to the petition and

[] reported at _____; or

[] has been designated for publication but is not yet reported; or

[X] is unpublished

The case is docketed in the United States Court of Appeals for the Ninth Circuit as Cause No. 23-16137 and was decided on January 30, 2024, before MOLLY C. DWYER, CLERK, U.S. COURT OF APPEALS. [See Appendix B]

For cases from Federal Courts:

1. The date on which the United States District Court decided the original cause was August 21, 2023.

[X] No petition for rehearing was timely filed in my case

[] A timely petition for rehearing was denied by the United States Court of appeals on the following date: _____,

And a copy of the order denying rehearing appears at Appendix ____

[] An extension of time to the petition for the writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No: N/A

Statement of the Issues Presented for Review

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

1. The Equal Protection Clause of Section 1 of the Fourteenth Amendment provides that no State shall “deny to any person within its jurisdiction the equal protection of the Laws.”
2. The United States Court of Appeals for the Ninth Circuit violated the U.S. Constitution Article I, Section 9, Clause 7, as the rights recognized by HJR-192, P.L. 73-10, codified at Title 31 USC §5118, apply for PUBLIC Commercial paper discharge, U.C.C. §9-105.
3. Respondent(s) is a “fiscal agent of the United States [Treasury],” pursuant to Title 12 USC §266. Therein, can a “fiscal agent” evade fiduciary banking duty to discharge and block petitioner’s access to banking in addition to violating the commerce clause?
4. The law that applies to the discharge is found at Title 48 CFR Ch. 1 §53.228 Bonds and Insurance. Did the United States Congress delete applicability of said code section?
5. The United States Constitution is a permanent injunction against the Public Trustees holding office for the benefit and protection of the Estate Holders, herein Petitioner is appearing as an undiminished capacity Secured Party Creditor in relation to his Estate. Therein, how is it possible that Petitioner is

NOT a creditor against Respondent (a banker) who is a “fiscal agent of the United States [Treasury],” Title 12 USC §266?

STATEMENT OF THE CASE

Petitioner requests this Court exercise its power and discretion under Rule 14.1(e) of its rules to grant a Writ of Certiorari after judgment in the United States Court of Appeals for the Ninth Circuit, which has entered judgment on an appeal of this case. The case presents questions about Discharge Rights associated with the Treasury Direct Account held by the United States Treasury and its International Treaty with the United Kingdom (CISG).

“The United Nations Convention on Contracts for the International Sale of Goods (CISG) has been recognized as the most successful attempt to unify a broad area of commercial law at the international level. It has been ratified by most of the world's important trading countries and become a template for the manner in which commercial law treaties are drafted. As of this writing, the CISG has been adopted by eighty-three countries. These nations are referred to as “Contracting States.” Every major trading nation except India, South Africa, and the United Kingdom has ratified the CISG. Cases interpreting it currently number in the low thousands, and more than 135 United States cases have referred to the CISG. With unreported arbitration awards added, this number must be considerably higher. The effect of the CISG within a Contracting State may vary with domestic law. For example, within the United States, which ratified the CISG in 1986 and where it entered into force in 1988, the CISG is considered a self-executing treaty. The CISG therefore creates a private right of action in federal court under federal law. The CISG provides the default set of rules that govern contracts for the sale of goods between parties located in different Contracting States, and, in some cases, where only one of the parties is located in a Contracting State. Where applicable the CISG preempts contrary provisions of domestic sales law, such as Article 2 of the Uniform Commercial Code (“UCC”) and other state contract law in the United States, and conflicting provisions of the German Civil Code (“BGB”) or the French Civil Code.”

See The CISG: history, methodology, and construction, Published online by Cambridge University Press: 05 June 2016

Petitioner tendered a bond, registered in the United Kingdom and the Depository Trust Clearing Company at 55 Waterstreet, New York City, New York in accordance with the rules for bonds set forth at Title 48 CFR Ch. 1 §53.228 Bonds and Insurance.

This Court, and all public offices, is defined under FRCP Rule 4(j) as a FOREIGN STATE, and is defined under TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE in accord with the Foreign Sovereign Immunities Act (FSIA) of 1976, which is a United States law, codified at Title 28 U.S.C. Sections 1330, 1332, 1391(f), 1441(d), and 1602-1611.

SUMMARY OF THE ARGUMENT

Respondent issued an extension of credit to Petitioner from petitioner's LEGACY account in accordance with the MoneyNet Daily Transfer Log Report 120 issued by the United States Treasury in concert with the applicable Federal Reserve Bank Trust account held for petitioner. Petitioner discharged the debt using bonds in accord with Title 48 CFR Ch. 1 §53.228 Bonds and Insurance. Petitioner sought assistance from the trial court to recognize the discharge and quiet the title on the Real Property/Land at issue. The Trial Court denied said support, refused to recognize said discharge, and said evidence of discharge and petitioner's moving the court for quiet title.

JURISDICTION FOR THE SUPREME COURT OF THE UNITED STATES

This court has jurisdiction as The Parties are operating within the confines of State, Federal, and International Treaty Law (CISG) for its contractual usage in

relation to commercial paper discharge through bonding, which said courts utilize daily in their own legal relations. Therein, commercial power is granted by and through U.S. Const. A1, S10, (the Contract Clause), Lex Mercantoria (codified at the Uniform Commercial Code), the Bills of Exchange Act, and the Treaty Power is granted by Article II, Section 2 of the United States Constitution. Therein, both the respondent (Rocket Mortgage, LLC et. al.) and the Federal courts lack authority to restrict discharge by petitioner in using bonds drawn from an open Treasury Direct Account to block said discharge of the commercial paper at issue – i.e. the securitized mortgage commercial paper generated by and through respondent (Rocket Mortgage, LLC et. al.). This is codified at Title 28 U.S.C. §1331, federal question.

Subject Matter Jurisdiction

Respondent is a “fiscal agents of the United States [Treasury]”, Title 12 U.S.C. §266; this is automatically a federal subject matter that is subject to the Federal Deposit Insurance Corporation, which was replaced by the U.S. Congressional Bank Insurance Fund.

The Bank Insurance Fund (BIF) was a unit of the Federal Deposit Insurance Corporation (FDIC) that provided insurance protection for banks that were not classified as a savings and loan association. The BIF was created as a result of the savings and loan crisis that occurred in the late 1980s.

LEGAL RELATION

Petitioner appears as an Aggrieved party, Jose-Franklin: family [Arau] (U.C.C. §1-201; (27) (14) (Hereinafter Aggrieved party), Sui Juris, Secured Party

(U.C.C. §9-105), NONPERSON (U.C.C. §1-201 (27)), NON-RESIDENT, NON-DEBTOR (28 U.S.C. §3002 (4)), NON-COPPERATED, NON-FICTION, NON-SUBJECT, NON-PARTICIPANT in any Government programs, a Living flesh and blood Man standing on the ground. Non-Diminished capacity Creditor, NON-CITIZEN, under Special Appearance (Rule 8 (E)) not generally, NON-DEFENDANT (U.C.C. §1-201 (14)), Holder-In-Due-Course (U.C.C. §3-302 (A) (2)) of all documentation (U.C.C. §5-102 (6)) of the "Entity" Cestui Que Vie trust CORPORATE FICTION: JOSE FRANKLIN ARAU©, representing the Corporate Fiction.

Pursuant to Title 31 CFR § 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks, this legal relation is governed under banking rules.

Therein, (a) Definitions. For purposes of this section:

- (1)(i) Account means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. Account also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.
- (ii) Account does not include:
- (3)(i) Customer means:
 - (A) A person that opens a new account; and
 - (B) An individual who opens a new account for:
 - (1) An individual who lacks legal capacity, such as a minor; or
 - (2) An entity that is not a legal person, such as a civic club.
- (ii) Customer does not include:
 - (A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;
 - (B) A person described in § 103.22(d)(2)(ii) through (iv); or
 - (C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

It would appear that UCC Article 8, sections 106 and 107 (i.e. UCC 8-106 and 8-107) would apply in this legal relation as Real Party In Interest, HDC (U.C.C. §3-302(A)(2)), SPC, Principal Owner is appearing in proper capacity, i.e. in Propria Persona.

Also, it would appear that UCC 2a-105 would apply herein.

UCC 2A-105. TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.

Subject to the provisions of Sections 2A-304(3) and 2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction [i.e. the UCC filing], compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

Statement of the Facts

ANALYSIS

Petitioner (Real Party in Interest (RPII)) defended in the trial court in equity for the purpose of preserving his marketable title after discharging the debt using bonds.

Said action was for the express purpose of lodging the discharging of the mortgage debt to settle said matter with the “Holder” of said debt.

The mortgage at issue was known as loan number 3483507801, MIN 100039034835078017, APN/Parcel ID# 060-2415-017-00.

Appellee Rocket Mortgage, LLC et. al. issued the mortgage. Respondent is NOT the “Holder” of the securitized mortgage debt. Respondent mortgage company securitized, sold, and transferred the Promissory Note to another “Holder.” This was performed more than once, A to B, B to C, C to D, etc.

The “Holder” of the mortgage debt was identified. Said “Holder” is identified as “Guaranteed REMIC Pass-Through Certificates Fannie Mae REMIC Trust 2021-71.” This entity is a matter of record in IRS Publication 938, applicable year (2021).

Said debt was discharged through bonds issued through the International Bond Market via Title 48 C.F.R. Ch. 1, Part 53.228.

Petitioner is the Principal Owner, Holder-in-Due-Course, Secured Party Creditor to the JOSE FRANKLIN ARAU ESTATE, Colorado UCC1 filing number 20222042206 and Colorado UCC1 Amendment 20222100609.

Said bonds (backed by a (U.S.) Treasury Direct Account) were issued from the JOSE FRANKLIN ARAU ESTATE as Jose-Franklin: family [Arau], living man, is the HDC, SPC.

UCC 2-511. Tender of Payment by Buyer; Payment by Check.

UCC 3-603. Tender of Payment.

UCC 5-102(6). Definitions. Document.

UCC 9-105. Control of Electronic Chattel Paper.

Judge Jacqueline Scott Corley blocked due process, engaged in restraint of trade, and did not allow the quiet title action to proceed after lawful discharge of the mortgage debt.

FACTUAL BACKGROUND

Petitioner obtained an extension of credit from Respondent for housing. Respondent operates pursuant to Title 12 USC §266, as “fiscal agents of the United States [Treasury].” Petitioner sought to discharge (“pay”) and settle said debt. Petitioner had to determine who the “Holder” of the debt was/is in order to effect discharge. See UCC §3-503(1)(c).

In accordance with Title 12 USC §266, Respondent is operating as “fiscal agents of the United States [Treasury],...” and has a “known legal duty” or “duty of care” (see Ellinger’s Modern Banking Law 5th Ed. by Ellinger, Lomnicka, and Hare) to disclose the identity of said “Holder” of the debt in question for discharge.

Petitioner is a depositor in accord with the Maternity Act of 1921 aka Sheppard-Towner Act, in accord with H.J.R.-192, P.L. 73-10, codified at 31 USC §5118(d)(2) as described in accord with the Law of Future Interest as it relates to International World Banking Rules of Basell II, future-labor-interest deposit backed currency.

ARGUMENT

Petitioner is not a “minor” as defined at Title 31 C.F.R. §363.6. Petitioner made claim to his securities, UCC1, UCC1 Amendment, proving RPII is a Holder-in-Due-Course, Secured Party Creditor, Principal Owner of his estate. Therein, Petitioner is a Holder-in-Due-Course, secured Party Creditor, Principal Owner to said Estate, JOSE FRANKLIN ARAU. Therein, after obtaining an extension of credit from Respondent, Petitioner discharged said “debt” using his securities listed in Colorado UCC filing 20222042206.

Therein, Petitioner is the “Holder for value” of a preceding consideration with the U.S. Treasury’s “fiscal Agent” aka Respondent and issued “valuable consideration for a bill may be constituted by- (b) an antecedent debt or liability. Such a debt [in this case by Petitioner against the U.S. Treasury’s “fiscal Agent’s” aka Respondent]

or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.”

A “Holder” is a different capacity than a “Holder-in-Due-Course.” Petitioner is a “Holder-in-Due-Course.” ONE of the Respondent(s) (Rocket Mortgage, LLC et. al., et. al.) was a “Holder” of the alleged mortgage debt by extension of credit and transfer therein from the original mortgage company – Rocket Mortgage, LLC et. al. A securities search was performed, Securities Discovery package as to the identity of the “Holder” of the debt for the mortgage securities for discharge at issue; Notarized Affidavit with Exhibits of Joseph [R.] Esquivel [Jr., Private Investigator, Texas, License # A20449] for Jose-Franklin: family [Arau] – September 6, 2022, Prospectus Supplement FNMA 2021-71, FNMA DOCUMENT CUSTODIAL GUIDELINES, Fannie Mae selling guidelines 5-15-12, Trust Information – Guaranteed REMIC Pass-Through Certificates Fannie Mae REMIC Trust 2021-71, and Notes for Jose Arau. Said Investigator has been operating in this field for 30 years and has developed PhD level research that is used by most of the foreclosure defense industry along with numerous court appearances as a fact witness on the subject matter. In addition, he works with a third generation licensed banker (William McCaffrey) with 40-years of experience, who testifies for the private sector and governmental agencies on the subject matter. Said banker issued an affidavit entered into the case to prove that the bonds tendered were valid for payment/discharge. The lower court ignored this evidence.

The mortgage was securitized and listed with the Securities and Exchange Commission.

Therein, as there are a number of potential “Holders” of the debt a search was performed to locate and identify the “Holder” (i.e. “Bearer” as defined by The Bill of Exchange Act) of the registered securities for said securitized debt.

The “holder” of the debt is Guaranteed REMIC Pass-Through Certificates Fannie Mae REMIC Trust 2021-71, Notarized Affidavit of Joseph R. Esquivel, Jr., page 2, paragraphs “13.”, “16.”, “17.”, “19.”, “20.”, “26.”, “28.”, “29.”, “31.”, “33.”, “34.”, “36.”, and “38.”

Pursuant to the Bills of Exchange Act of 1968 a “Holder” is defined as “payee...of a bill or note who is in possession of it” aka “Bearer” means “the person in possession of a bill or note which is payable to bearer.” In other words, the trustee of Guaranteed REMIC Pass-Through Certificates Fannie Mae REMIC Trust 2021-71, which is registered with the Securities and Exchange Commission is the “Holder”/ “Bearer.”

Therein, Petitioner served said “Holder” via its Trustee with registered Bonds for discharge in accordance with Title 48 C.F.R. Ch. 1, §53.228.

The address for said discharge is Nomura Securities International, Inc., Prospectus Department, Worldwide Plaza, 309 West 49th Street, New York, NY 10019-7316.

During this process Petitioner filed a Quiet Title Action to enforce the discharge.

Therein, the term “Drawer” is defined (Black’s Law Dictionary, 6th Ed., page 495) as “The person who draws a bill or draft” or in this case “bonds” is the Petitioner.

Therein, the term “Drawee” is defined (Black’s Law Dictionary, 6th Ed., page 495) as “The drawee of a check [bonds] is the bank [U.S. Treasury] on which it is drawn.” Therein, the Trustee (Guaranteed REMIC Pass-Through Certificates Fannie Mae REMIC Trust 2021-71) is a “fiscal agent of the United States [Treasury]”, see Title 12 U.S.C. §266.

Therein, the term “Discharge” is defined (Black’s Law Dictionary, 6th Ed., page 463) as it applies to “contract” as “To cancel the obligation of a contract; to make an agreement or contract null and inoperative.”

Therein, upon the issuing of bonds drawn on Petitioner’s Treasury Direct Account and tendered to said Trustee (Guaranteed REMIC Pass-Through Certificates Fannie Mae REMIC Trust 2021-71), the legal liability known as the “mortgage” is “discharged.”

Therein, the trial court has a “known legal duty” to carry out the discharge derived from Petitioner.

As stated on page 13 of the 1968 “Bill of Exchange Act,” “but if the bill in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.”

Pursuant to *Perry v. United States*, 294 U. S. 349 (1935) “2. The Joint Resolution of June 5, 1933, insofar as it undertakes to nullify such gold clauses in obligations of the United States and provides that such obligations shall be

discharged by payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts, is unconstitutional. P. 294 U. S. 349."

Therein, the bonds tendered discharged the mortgage commercial paper liability, U.C.C. §9-105.

"The Joint Resolution of June 5, 1933, had enacted that such bonds should be discharged by payment, dollar for dollar, in any coin or currency which, at time of payment, was legal tender for public and private debts." Perry, *supra*.

The California Civil Code §8424 allows either the owner or the contractor employed to improve the property to file a bond before or after foreclosure proceedings are instituted and thereby discharging the realty from the lien.

APPLICABLE LAW

All legal matters dealing with underwriting and securities fall under Admiralty, Maritime jurisdiction. See Benedict on Admiralty, Vol. 1, Jurisdiction, any edition. This writer reminds the court that the Constitution for the United States of America, Circa 1787, holds that pursuant to Art III, Sect. 2, Cl. 1, Cases or Controversies, there are four law forms (jurisdictions); [common] law, equity, admiralty, and maritime. In order to enter admiralty [contract] jurisdiction on land, rules of equity (trust) law must apply and in order to enter equity jurisdiction, contract principles of [common] law must apply. The fact that the "Holder" of the debt has filed its "Prospectus" with the Securities and Exchange Commission, it

would appear that the securitized “mortgage” would fall under admiralty law; underwriting and securities.

In the United States, Bonds and Insurance fall under Special Rules of Admiralty and Maritime Jurisdiction.

Therein, Title 48 CFR Ch.1, §53.228 is applicable for discharge in addition to the nature of California Civil Code §8424, Mechanics Lien Release Bond, or the applicable California State Code on using bonds to settle commercial liabilities.

The California Civil Code §8424 allows either the owner or the contractor employed to improve the property to file a bond before or after foreclosure proceedings are instituted and thereby discharging the realty from the lien.

In accord with FRCP XIII. SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS, Rule E. Actions in Rem and Quasi in Rem: General Provisions, Rule 5(E)(a) Special Bond, “The various forms of security for the release of a vessel – a ‘club’ letter of undertaking, letter of credit payable against a sight draft drawn by the plaintiff, or a bond – are interchangeable in admiralty.” Overstreet v. Water Vessel Norkong, 706 F.2d. 641, 1987 AMC 818 (5th Cir. 1983). Once security is posted and the vessel released, the lien is extinguished. Folkstone Maritime, Ltd. v. CSX Corp., 866 F.2d. 955, 1989 AMC 867 (7th Cir. 1989).

It is a principal of law that “A payment tendered is a payment paid.”

UCC § 3-603. TENDER OF PAYMENT.

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

- (b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.
- (c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

With admiralty jurisdiction comes the application of substantive admiralty law. Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1, 25, 20 L.Ed. 90 (1870) states: "Admiralty jurisdiction defines also the place or territory where the law maritime prevails."

"And plainly, we think, [no state's] legislation is valid if it contravenes the essential purpose expressed by an act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and Interstate relations." [244 U.S. at 215-16, 37 S.Ct. at 528-29] Southern Pacific Company v. Jensen, 244 U.S. 205, 37 S.Ct. 524 (1917).

The law of marine insurance has never been codified in the United States. However, the basic substantive law of marine insurance is federal maritime law, [Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1, 20 L.Ed. 90 (1870); DeLovio v. Boit, 7 F.Cas. 418, 1997 AMC 550 (C.C.D.Mass.1815) (No.3776)], and the Supreme Court has stated that United States courts should look to English law for the applicable rules because of the "special reasons for keeping in harmony with the marine insurance laws of England, the great field of this business." [Queen Ins. Co. of

America v. Globe & Rutgers Fire Ins. Co., 263 U.S. 487, 493, 44 S.Ct. 175, 176, 68 L.Ed. 402 (1924)] However, in Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 75 S.Ct. 368, 99 L.Ed. 337 (1955), the Supreme Court ruled that in the absence of a controlling federal admiralty law principle to guide the resolution of a particular issue, the courts must apply the applicable state law rule.

Wilburn Boat does not change the initial inquiry of the courts in interpreting a policy of marine insurance to determine whether there is an established federal maritime law rule. [Continental Oil Co. v. Bonanza Corp., 677 F.2d 455, 461, 1983 AMC 387 (5th Cir.1982)]

In practice the application of the Wilburn Boat doctrine means that marine insurance in the United States will be dominated by state law rules; most federal courts simply recite the rule and apply state law. Many (probably most) in the admiralty bar would favor the enactment of a federal marine insurance act such as the British Marine Insurance Act of 1906. Therein, whatever the case may be, we are dealing with British Crown Commercial paper U.C.C. §9-105. Therein, the International Bond Market (IBM) controls. Therein, the bonds tendered to the court were processed in the IBM and applicable to the mortgage (court) charges in question.

Furthermore, the premises of Black Diamond S. S. Corp. v. Robert Stewart & Sons, 336 U.S. 386 (1949), apply;

“Admiralty practice is a unique system of substantive law and procedure with which members of this Court are singularly deficient in experience.”

“The proceeding is conducted in two stages. In the first or preliminary stage the owner petitions for relief from personal liability, is required either to surrender his interest in the ship and her freight or to stipulate, with adequate bond, to pay

into court its value. The statute says, Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to **630 the matter in question shall cease.' At this point an important change in the nature of the proceeding occurs.

The proceeding continues as a proceeding in rem against either the ship or the fund as the res. Our rules provide that when petitioner complies with the court's order as to surrender or bond, the court shall issue a monition requiring all persons asserting claims to file the *401 same and may also issue injunction against the further prosecution of suits against either the owner or the vessel. Rule 51. The court then adjudicates the claims and apportions the available fund among them. Rule 52. The owner is at liberty to contest his liability or the liability of the vessel 'provided he shall have complied' with the requirements of surrender or deposit as above set forth. Rule 53."

CONCLUSION

The issues presented would have a great impact on the banking relations of not just The Parties herein but the ability of any similar depositor, SPC, to discharge similar issues. Therein, there is a great disparity of the Creditor/Debtor relations in the United States between the Depositor/Grantor/Beneficiary(ies) and the Public Trustee/Bankers. In accord with Supreme Court of the United States, Rule 20.4(a), and FRCP, Rule 8 (e), Petitioner is seeking relief to order the United States Court of Appeals for the Ninth Circuit to allow petitioner to Lodge the Discharge evidence and move the court to quiet the title to the Real Property/Land in question:

LOT 16 AND THE NORTHEASTERN 5 FEET OF LOT 15, "MAP OF NORTH TERRACE TRACT ALAMEDA CO. CAL," FILED THE CITY OF BERKELEY, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, FILED OCTOBER 12, 1905, MAP BOOK 20, PAGE 80, ALAMEDA COUNTY RECORDS.
aka 1227 Neilson Street, Berkeley, California

Respectfully submitted,



Jose Franklin: family [Arau], Pro Per
Petitioner