

23-7212
No. _____

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SUPREME COURT U.S.

In the
Supreme Court of the United States

ORIGINAL

Keith P. Sequeira &
Helen D. Sequeira,
Petitioners,

On Petition for a Writ of Certiorari
to the United States Court of
Appeals for the Third Circuit

v.

Metropolitan Life Insurance
Company, *et al*;
Respondents.

Petition for a Writ of Certiorari

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I. Questions Presented

A case was filed in State Court. It stated on its face a Federal Question.

Petitioners removed to District Court. Respondent moved to remand. A remand order was issued remanding the case to State Court. But the jurisdiction transferring event in *this* Circuit (physical mailing) did not occur. Petitioners present two questions.

A. Whether the courts below may decide an important question of federal law not settled by this Court by expanding 28 U.S.C. § 1821(d)(6)'s jurisdictional grant to include New Jersey's State and District Courts *and* the Third Circuit?

B. When does a District Court lose jurisdiction following its issue of a remand order? Or, stated differently, at what point is a remand order "not reviewable on appeal or otherwise"?

The Circuits are split. Petitioners thus ask:

- does 28 U.S.C. "§ 1447 divest[] a district court of jurisdiction upon the *entry* of its remand order" as is held in the Fourth, Eighth, Tenth, and Eleventh, Circuits? *or*
- does "a district court lose[] jurisdiction over a case once it has completed the remand by *sending* a certified copy of the remand order to the state court" as is held in the Second, Third, Fifth, Sixth, Seventh, and Ninth, Circuits? *or*
- does 28 U.S.C. § 1447(d) bar reconsideration "when the state court *receives* the remand order and resumes jurisdiction" as is held in the First Circuit? *or*
- does a district court lose jurisdiction over a case upon its "*grant* of a motion to remand to state court" as is held by the Superior Court of New Jersey – Appellate Division?

II. Parties to the Proceeding (Rule 14.1.(b)(i))

A. Petitioners

The Petitioners in this matter are Keith P. Sequeira and Helen D. Sequeira.

B. Respondents

The Respondents in this matter are Metropolitan Life Insurance Company (“MetLife”); Federal Deposit Insurance Corp. (“FDIC”) as Receiver for Washington Mutual Bank, N.A. (lka Washington Mutual Bank) (“WaMu”); JPMorgan Chase Bank, N.A. (“Chase”); I. Mark Cohen, Esq. (“Cohen”); LSF8 Master Participation Trust (“LSF8”); Caliber Home Loans, Inc. (“Caliber”); Mark S. Cherry, Esq. (“Cherry”); Joshua W. Denbeaux, Esq. (“Denbeaux”); Javier Merino, Esq. (“Merino”); Goldman Sachs Mortgage Company (“Goldman”); Selene Finance LP (“Selene”); NewRez LLC dba Shellpoint Mortgage Servicing (“Shellpoint”); Knuckles, Komosinski & Manfro, LLP (“KKM Firm”); Michel Lee, Esq. (“Lee”); John E. Brigandi, Esq. (“Brigandi”); John & Jane Does (1–10).

III. Statement of Related Proceedings (Rule 14.1.(b)(iii))

The proceedings in the state and federal courts that are “directly related” to the case in this Court are:

- A. *JPMorgan Chase Bank, N.A., v. Sequeira*, Dkt. No. MON–F–9377–09 (Unpub.) (N.J. Ch. Div. Jan. 15, 2010) (“Foreclosure–I”);
- B. *LSF8 Master Participation Trust v. Sequeira*, Dkt. No. F–17494–15 (Unpub.) (N.J. Ch. Div. Oct. 11, 2016) (“Foreclosure–II”);
- C. *Sequeira v. JPMorgan Chase Bank, N.A.*, Civil Action No. 16–5278 (GC)(RLS) (D.N.Y. Mar. 29, 2019) (“Sequeira–I”);
- D. *MetLife v. Sequeira, et al. v. FDIC, et al.*, Docket No.: SWC–F–005810–21 (“Foreclosure–III”);
- E. *MetLife v. Sequeira, et al. v. FDIC, et al.*, Civil Action No.: 3:21–cv–20618 (GC)(RLS) (Unpub.) (May 6, 2022) (“Sequeira–II”);
- F. *Sequeira, et al. v. FDIC, et al.*, MON–L–000566–23 (“Sequeira–III”);

- G. *Sequeira v. FDIC, As Receiver for WaMu*, Civil Action No.: 1:23-cv-02095 (CRC) (“Sequeira-IV”);
- H. *MetLife v. Sequeira, et al. v. FDIC, et al.*, No. 23-1324 (Unpub.) (3d Cir. Nov. 6, 2023) (“Sequeira-V”);
- I. *MetLife v. Sequeira, et al.*, Dkt. No. A-002295-22T4 (Unpub.) (N.J. App. Div. Jun. 9, 2023) (“NoA-I”);¹
- J. *Sequeira, et al., v. FDIC, et al.*, Dkt. No. A-003470-22T2 (Unpub.) (N.J. App. Div. Aug. 30, 2023) (“NoA-II”);¹
- K. *Sequeira, et al. v. FDIC, et al.*, Dkt. No. A-000172-23T2 (Unpub.) (N.J. App. Div. Dec. 18, 2023) (“NoA-III”);¹
- L. *MetLife v. Sequeira, et al.*, Dkt. No. A-000635-23T2 (Unpub.) (N.J. App. Div. Dec. 7, 2023) (“NoA-IV”).¹
- M. *In re Keith Sequeira and Helen Sequeira* (Related to D.N.J. No. 3-21-cv-20618) No. 23-3262 (“WoM-I”).

¹ “NoA” refers to Notices of Appeal –I to –IV that were dismissed without prejudice as interlocutory. The Superior Court of New Jersey Appellate Division (“App Div”) did *not* address the threshold issue: whether the trial courts of the Superior Court had re-acquired jurisdiction following the removal of Foreclosure-III to the U.S. District Court for the District of New Jersey (“Dist Ct (NJ)”).

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VI. Federal Opinions Below (Rule 14.1.(d))

The orders of the Federal Courts and their dates of entry are listed below:

- A. the *en banc* order of the 3d Cir denying Petition for Panel Rehearing and Hearing *En Banc* (of order at ¶ B.) was entered on April 1, 2024 (Appendix–L at 27a);
- B. the order of a panel of the 3d Cir denying Petition for a Writ of Mandamus (“WoM–I”) was entered on March 4, 2024 (Appendix–M at 28a–30a);
- C. the order of a panel of the 3d Cir denying Motion to Clarify was entered on November 6, 2023 (Appendix–C at 5a–6a);
- D. the order of the *en banc* 3d Cir denying Petition for Panel Rehearing and Hearing *En Banc* (of order at ¶ E.) was entered on October 6, 2023 (Appendix–D at 7a–8a);
- E. the order of a panel of the 3d Cir denying Motion Pursuant to Fed. R. App. P. 4(a)(5) for an Extension of Time to Appeal was entered on July 27, 2023 (Appendix–F at 10a–13a);
- F. the order of the 3d Cir granting Motion for Leave to Proceed *In Forma Pauperis* was entered on April 28, 2023 (Appendix–K at 26a);
- G. the Memorandum Order of the District Court for the District of New Jersey remanding case to the Superior Court of New Jersey, Chancery Division, Monmouth County (“Ch Div”) was entered on May 6, 2022 (“Remand Order”) (Appendix–J at 19a–25a).

VII. Federal and State Opinions Below (Rule 14.1.(d))

Petitioners set forth *all* the orders and opinions below “that may be essential to understand the matters set forth in the petition” (Fed. R. App. P. 21(a)(2)(C)):

A. On April 1, 2024, Circuit Judge Matey authored an order denying Petition for Panel Rehearing and Hearing *En Banc* (of order ¶ B.) (Document–11). The Text Order in the 3d Cir docket noted:²

ORDER (JORDAN, SHWARTZ, RESTREPO, BIBAS, PORTER, MATEY, FREEMAN, MONTGOMERY–REEVES and CHUNG, Circuit Judges) The petition for rehearing filed by Petitioners Keith P. Sequeira and Helen D. Sequeira is DENIED. Matey, Authoring Judge. (TMM).

[Document–11].

B. On March 4, 2024, by *per curiam* order, the 3d Cir denied Petition for a Writ of Mandamus (“WoM–I”) (Document–9). The Text Order in the 3d Cir docket noted:³

PER CURIAM ORDER (BIBAS, MATEY and CHUNG, Circuit Judges) This case came to be considered on a petition for writ of mandamus submitted on February 8, 2024. On consideration whereof, it is now hereby ORDERED by this Court that the petition for writ of mandamus be, and the same is, denied. Panel No.: BLD–067. (TMM).

[Document–9].

C. On December 18, 2023, Judge Sumners denied NoA–III¹ “without prejudice.”⁴

D. On December 7, 2023, Judges Haas and Puglisi denied NoA–IV¹ noting that “the appeal is dismissed without prejudice as interlocutory.”⁵

² A true and correct copy of Document–11 is attached hereto as Appendix–L.

³ A true and correct copy of Document–9 is attached hereto as Appendix–9.

⁴ A true and correct copy of the App Div order denying NoA–III is attached hereto as Appendix–A.

⁵ A true and correct copy of the App Div order denying NoA–IV is attached hereto as Appendix–B.

E. On November 6, 2023, Circuit Judge Scirica authored an order⁶ (Document–26) denying M–XX (Clarify) (Document–23). The Text Order in the 3d Cir docket noted:

ORDER (JORDAN, CHUNG and SCIRICA, Circuit Judges) denying motion to clarify filed by Appellants Keith P. Sequeira and Helen D. Sequeira. SCIRICA, Authoring Judge. (JK) [Document–26].

F. On October 6, 2023, Circuit Judge Scirica authored an order⁷ (Document–22) denying Petition–I (Document–15). The text order on the 3d Cir’s docket noted:

ORDER (JORDAN, SHWARTZ, RESTREPO, BIBAS, PORTER, MATEY, FREEMAN, MONTGOMERY–REEVES, CHUNG and SCIRICA*, Circuit Judges) denying Petition for En Banc and Panel Rehearing filed by Appellant Keith P. Sequeira. SCIRICA, Authoring Judge. *As to panel rehearing only. (JK)" [Document–22].

G. On August 30, 2023, Judges Gilson and Byrne denied NoA–II¹ for the following reasons:⁸

Plaintiffs have not demonstrated sufficient justification to overcome the strong policies disfavoring piecemeal review of litigation. *Brundage v. Estate of Carambio*, 195 N.J. 575, 599 (2008). This appeal from an interlocutory order is dismissed without prejudice.”

H. On July 27, 2023, Circuit Judge Scirica authored an order (Document–14)⁹ which denied M–XV (Appellate Jurisdiction) (Document–11) and dismissed NoA–I (3d Cir) (Document–1) “for lack of jurisdiction” citing *Agostini v. Piper*

⁶ A true and correct copy of Document–26 is attached hereto as Appendix–C.

⁷ A true and correct copy of Document–22 is attached hereto as Appendix–D.

⁸ A true and correct copy of the App Div order denying NoA–II is attached hereto as Appendix–E.

⁹ A true and correct copy of Document–14 is attached hereto as Appendix–F.

Aircraft Corp., 729 F.3d 350, 354–55 (3d Cir. 2013). The text order on the 3d Cir's docket noted:

ORDER (JORDAN, CHUNG and SCIRICA, Circuit Judges) dismissing Appellants' appeal for lack of appellate jurisdiction. Panel No.: DLD-176. SCIRICA, Authoring Judge. (JK). [Document-14].

- I. On June 9, 2023, Judges Accurso and Firko dismissed NoA-I¹ “without prejudice as interlocutory.”¹⁰
- J. On February 2, 2023, District Judge Castner issued a Text Order¹¹ (ECF No. 33) denying M–VI (Extend Time) (ECF No. 29) for the reasons set forth below:

The Court is in receipt of Defendants Keith Sequeira and Helen Sequeira's (“Defendants”) Motion for Extension of Time to file a Notice of Appeal (ECF No. 29). The Court issued an Order granting the Motion to Remand on May 6, 2022. (ECF No. 27.) The transmittal letter and a certified copy of the remand order *were sent* to the Monmouth County Courthouse on May 6, 2022. (ECF No. 28.) The Third Circuit has held that the “jurisdictional event” which divests a district court of jurisdiction is when “the certified copy of the remand order [*is sent*] to state court.” *Agostini v. Piper Aircraft Corp.*, 729 F.3d 350, 356 (3d Cir. 213). Therefore, *this Court does not have jurisdiction* to review the request to Extend Time to File a Notice of Appeal. The Court, consequently, denies Defendants' Motion. So Ordered by Judge Georgette Castner on 2/2/2023. (adj) (Entered: 02/02/2023) [emphasis added].

- K. On November 9, 2022, Judge Mayer denied Petitioners' Application for Permission to File Emergent Motion (“App Div–I”)¹² for the reasons set forth below (CHC2022272007):

Defendant has yet to file a responsive pleading in this foreclosure action. While defendant filed a motion to vacate the

¹⁰ A true and correct copy of the App Div order denying NoA–I is attached hereto as Appendix–G.

¹¹ A true and correct copy of ECF No. 33 is attached hereto as Appendix–H.

¹² A true and correct copy of App Div–I is attached hereto as Appendix–I.

foreclosure default judgment, he failed to provide a proposed responsive pleading in support of the motion to vacate default judgment. Defendant mistakenly believed the materials he submitted in a separate federal action constituted a responsive pleading in this foreclosure action. Under Rule 4:43-3, a motion to vacate the entry of default must be “accompanied by (1) either an answer to the complaint and Case Information Statement or a dispositive motion pursuant to Rule 4:6-2, and (2) the filing fee for an answer or dispositive motion[.]” At the hearing on November 4, 2022, the motion judge recognized defendant misunderstood the filing process. Per the trial court’s November 4, 2022[,] order, defendant has an opportunity to submit a responsive pleading by November 15, 2022. If defendant files a proper responsive pleading and pays the filing fee by that date, the trial court would then have jurisdiction to entertain any applications filed by defendant seeking relief in the foreclosure action, including a stay of the sheriff’s sale rescheduled for December 5, 2022.¹³

¹³ Petitioners argue – for the non-exclusive reasons below – that Judge Mayer did *not* find the facts *nor* apply thereto appropriate conclusions of Federal- and State-Law.

Nor was she guided by a long line of federal cases which have “exhibited an expectation that the state court would on remand consider the entire case, including the federal pleadings,” *Edward Hansen, Inc. v. Kearny Post Office Assocs.*, 166 N.J. Super. 161, 165 (Ch. Div. 1979).

Nor was she guided by R. 4:24(1)(d), which provides that: “[o]n matters remanded from a United States District Court [] all injunctions, orders, and other proceedings in such action prior to its remand shall remain in full force and effect until dissolved or modified by the Superior Court.”

Nor did she find:

- (a) that the Off Forecl and the trial divisions disregarded Federal- and State-Law¹⁹ and violated R. 1:18 which “obligates every judge to abide by the [Rules of Professional Conduct (“RPC”)] and the [Code of Judicial Conduct (“CJC”)],” *DeNike v. Cupo*, 958 A.2d 446, 454 (N.J. 2008) (citing R. 1:18);
- (b) that the Ch Div had *not* re-acquired jurisdiction because the Clerk of the Dist Ct had *not* physically mailed a certified copy of the Remand Order to the Clerk of the Ch Div, *see Agostini v. Piper Aircraft Corp.*, 729 F.3d 350, 355-356 (3d Cir. 2013) (quoting “the text of 28 U.S.C. § 1447(c)”);
- (c) that Petitioners *did* file “responsive pleading[s]” – Answer-I and Answer-II;
- (d) that Answer-I and Answer-II were *not* filed in a “separate federal action” – Sequeira-II was the term used to describe Foreclosure-III upon its removal to, and pendency in, Dist Ct;

L. On May 6, 2022, District Judge Castner issued a Remand Order¹⁴ (ECF No. 27) granting M-II (Remand) (ECF No. 11), remanding Sequeira-II to the Ch Div, and “terminat[ing]” M-IV (Dismiss) (ECF No. 24).

The Remand Order “did not set out the judgment of dismissal in a separate document.”¹⁵ Nor did the Text Order contain the “electronic signature”¹⁶ of Judge Castner. The Remand Order could *not* therefore “be considered a separate document”¹⁷ and, accordingly, was “not deemed entered until ‘150 days ha[d] run from the entry in the civil docket.’ *Fed. R. Civ. P.* 58(a), (c)(2)(B).”¹⁸ 150 days from May 6, 2022, was October 3, 2022.

- (e) that “the state court [must] on remand consider the entire case, including the federal pleadings,” *see Edward Hansen, supra*, 166 N.J. Super. at 165;
- (f) that Answer-I and Answer-II – federal pleadings – “remained[ed] in full force and effect” pursuant to *R. 4:24(1)(d)*;
- (g) that Petitioners *had* filed “contesting” Answers; and
- (h) that Petitioners *had not* “misunderstood the filing process.”

¹⁴ A true and correct copy of ECF No. 27 is attached hereto as Appendix-J.

¹⁵ *Witasick v. Minnesota Mut. Life Ins. Co.*, 803 F.3d 184, 187 (3d Cir. 2015).

¹⁶ The Dist Ct uses “[t]he federal CM/ECF system [which] allows for three distinct types of case-related entries: text orders, utility events, and minute entries,” *Witasick, supra*, 803 F.3d at 188–189. Text orders have the “force and effect of a court order” (*Id.* at 188) and “usually have no difficulty satisfying the separate document requirement of [*Fed. R. Civ. P.*] 58(a) and *In re Cendant [Corp. Securities Litigation*, 454 F.3d 235, 241 (3d Cir. 2006)]. They are separate and self-contained from any actual opinion; they note the relief granted; and they omit (or substantially omit) the District Court’s reasoning. And, significantly, they contain an electronic signature of a judge,” *Witasick, supra*, 803 F.3d at 189 (emphasis added).

¹⁷ *Id.* at 188 (citing *In re Cendant, supra*, 454 F.3d at 243).

¹⁸ *Id.* at 187.

The eCourts Case Jacket (“Ch Div Record”) does not contain a certified copy of the Remand Order and, as such, it is clear that the jurisdiction transferring event in *this* Circuit (physical mailing) did not here occur.

Petitioners thus submit that their *early*–filed motion dated June 14, 2022, for an extension of time to appeal (“M–VI (Extend Time)”) was moot; that the Federal Courts acquired – and retain – jurisdiction after Foreclosure–III was removed from State Court;¹⁹ and that all State Court orders issued after December 20, 2021 (Removal Date) are void and must be set aside.

VIII. Statement of the Court’s Jurisdiction (Rule 14.1.(e), Rule 14.1.(e)(iv))

Petitioners respectfully Petition for a Writ of Certiorari to review the orders in this case of the United States Court of Appeals for the Third Circuit (“3d Cir”).

The Court has jurisdiction to review the 3d Cir’s November 6, 2023, Order under 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651(a).

IX. Order to be Reviewed (Rule 14.1.(e)(i)).

On November 6, 2023, a panel of the 3d Cir *denied* Petitioners’ Motion to Clarify that Appeal–II is Active or, Alternatively, Motion Requesting a Statement of Reasons for the Dismissal of Appeal–II. 90 days from November 6, 2023, is *Sunday*, February 4, 2024. The period within which this Writ of Certiorari (“SCt Petition–I”)

¹⁹ On and with effect from December 20, 2021, Federal–Law enjoined MetLife to “proceed *no further*” and State–Law reminded the trial divisions of the Superior Court and the Office of Foreclosure (“Off Forecl”) that the Dist Ct maintained “*sole* jurisdiction over the litigation.”

- (a) as to Federal–Law – 28 U.S.C. § 1446(d) provides that “the State court shall proceed no further unless and until the case is remanded;”
- (b) as to State–Law – *see Jatczyszyn v. Marcal Paper Mills, Inc.*, 27 A.3d 213, 219 (N.J. App. Div. 2011) (holding that “[i]n the period between removal of a case to federal court and the grant of a motion to remand to state court, the federal court maintains sole jurisdiction over the litigation”).

may be filed “shall [thus] extend until the end of the next day [February 5, 2024] that is *not* a . . . Sunday.” *Rule 30* (emphasis added).

Petitioners appeal the order of the 3d Cir dated November 6, 2023, and, accordingly, SCt Petition—I was timely filed on January 29, 2024.

X. The Constitutional Provisions and Statutes involved in this case (Rule 14.1.(f))

The constitutional provisions and statutes involved in this case are set forth in the Table of Authorities.

XI. Concise Statement of the Case (Rule 14.1.(g))²⁰

The questions presented to this Court have arisen *ad seriatim* and concurrently as a result of matters that were timely raised in the Ch Div—Law Div—App Div; the Dist Ct (NJ)—3d Cir; and the Dist Ct (DC).

Petitioners have experienced at first-hand the prejudicial effect of: (1) the usurping by New Jersey’s State and Federal Courts of FIRREA’s exclusive jurisdictional grant as set forth in 12 U.S.C. § 1821(d)(6); and (2) the Circuit split on the issue of when jurisdiction passes from a Federal Court to a State Court following removal and remand.

MetLife filed Complaint in the Ch Div. 77a. The Ch Div is a Court of Equity. 77a–78a. The N.J. Court Rules and the Cases provide that germane counterclaims may be pled in a foreclosure action. 78a. The face of the Complaint stated a Federal Question pursuant to FIRREA (“WaMu Claims”). 50a–52a, 78a–79a. *N.J. Const. art.*

²⁰ The SoC is informed by the attached Appendices and, expressly, by the Procedural History & Statement of Material Facts and Law (“SoMF”) (Appendix–O, 59a–194a). Petitioners believe that a review of the Appendices, and the SoMF, is “essential to understand the petition” *Rule 14.1.(h)(vi)*.

VI, § III, ¶ 4, the Entire Controversy Doctrine, and Principles of Judicial Comity required that the Ch Div adjudicate *all* aspects of the controversy. 79a–80a.

Petitioners removed the Complaint to Dist Ct (NJ). 80a–81a. Federal– and State–Law thereafter stripped the N.J. Superior Court’s trial divisions of jurisdiction. 81a. Foreclosure–III was “contested.” 81a. The Off Forecl and the Ch Div purported to exercise jurisdiction. 82a–83a. MetLife engaged in violations of the CFA and RPC by moving in the Ch Div for Default Judgment. 83a–84a.

MetLife moved in Dist Ct (NJ) to remand. 84a–85a. Petitioners filed “contesting” Answers. 85a. Answer–I asserted eleven Affirmative Defenses and three “germane counterclaims.” 86a–90a. Answer–II asserted Third–Party Complaints (“TPC”) against WaMu, Chase and Chase’s Assignees because all Assignees in the chain of title were liable for the act/(s) of their predecessor/(s) pursuant to the fraud exception to successor non–liability and because the Assignees were not Holders in Due Course. 90a–117a. Petitioners joined and asserted claims against WaMu; the Attorneys; Chase; LSF8–Caliber; Goldman–Selene; MetLife–Shellpoint. *Id.* The Answers demonstrated that the Complaint did not set forth a complete and unbroken chain of title to the Note, the Mortgage, and the Servicing Rights thereto, in violation of *R. 4:64(1)(b)(10)*. *Id.* Petitioners’ motion filings demonstrated that the Ch Div lacked jurisdiction. 117a–118a.

Judge Castner granted MetLife’s Motion to Remand Sequeira–II to the Ch Div. 119a–122a. The Remand Order was not a “separate document.” *Id. Fed. R. Civ. P. 58(c)(2)(B)* thus provided that Petitioners could appeal the Remand Order within 150 days of its entry, or by October 3, 2023, because the jurisdictional event – *physical* mailing – did not here occur. Jurisdiction remained with the Dist Ct (NJ). *Id.*

The Complaint was “contested.” *Id.* MetLife nevertheless moved fraudulently for Default Judgment. Not once. But twice. 122a–124a. Petitioners opposed default and repeatedly (albeit unavailingly) requested a stay of proceedings in the Ch Div and the App Div on jurisdictional grounds. 124a–130a. Judge Quinn improvidently granted Default Judgment and Writ of Execution. 130a–133a. Default Judgment was eventually vacated but Judge Quinn thereafter condoned egregious discovery violations by MetLife and purported to create new law in flagrant violation of the N.J. Const., N.J. Court Rules, and controlling case law, by severing and transferring to the Law Div: Recoupment Claims and Germane Counterclaims. 134a–145a.

Petitioners filed the first (of two) appeals in the 3d Cir. 145a–151a.

MetLife and Court Staff created a false record in the Law Div by *inter alia* uploading Petitioners’ pending Motion to Amend. *Id.* Petitioners’ discovery demands were disregarded. *Id.* MetLife fraudulently concealed crucial documents. *Id.* Petitioners moved to amend the Answers. *Id.* The Ch Div’s scheduling notices confirmed that the Motion was to be decided in the Ch Div. *Id.* Petitioners had not filed *any* motions in the Law Div. *Id.* MetLife nevertheless purported to file in the Law Div a *Cross–Motion for Summary Judgment*. *Id.* Petitioners filed the first of multiple jurisdiction–based appeals in the App Div all of which were denied without prejudice as “interlocutory.” 151a–152a. NoA–I (App Div) was pending. 152a–154a. The Law Div lacked jurisdiction. *Id.* Discovery was not complete. *Id.* Judge Acquaviva nevertheless compelled oral argument and improvidently decided all pending Motions in favor of MetLife. *Id.*

Petitioners repeatedly petitioned the Federal Courts to address the question whether a certified copy of the Remand Order had actually been *physically* mailed to the Clerk of the Ch Div by the Clerk of the Dist Ct (NJ). 154a.

Judge Acquaviva characterized the jurisdiction-transferring event in this Circuit as a “technicality.” 155a–157a. He improvidently granted MetLife–Counsel’s Cross–Motion for Summary Judgment and purported to strike Petitioners’ Answers (which was never filed in the Law Div). *Id.* Judge Jones improvidently denied oral argument and improvidently denied Petitioners’ Motion for Sanctions or fully–responsive discovery and Motion to Amend Answers. 157a–160a.

Petitioners exhausted their administrative remedies pursuant to FIRREA and, thereafter, filed WaMu Claims in Dist Ct (DC) and continued to (unavailingly) petition the App Div. 160a–161a.

The improvident truncating of Petitioners’ Answers crossed the line separating errors of fact and law from discriminatory judicial misconduct. 161a. MetLife was emboldened to fraudulently conceal material evidence and move for summary judgment. *Id.* Petitioners filed motions challenging the Superior Court’s jurisdiction on the basis of certifications and documentary evidence. 161a–162a. Specifically, Petitioners opposed summary judgment on the basis of a 50–paragraph Responding Statement of Material Facts Pursuant to R. 4:46–2(b), a 147–paragraph (excluding sub–paragraphs) Certification of KS, and approximately 400 pages of Exhibits. *Id.* Petitioners therein impugned all three elements of MetLife–Counsel’s *prima facie* case. *Id.* Judge Bauman nevertheless granted summary judgment in a further demonstration of discriminatory judicial misconduct. *Id.* The Clerk’s Office issued the first (of multiple) Administrative Orders which required MetLife–Counsel

to file a certification of exceptional circumstances. 162a–164a. MetLife–Counsel purported to – but, in fact, did *not* – present any substantive opposition to Petitioners’ Motions save for a document (SAR–I) obtained by fraud. 164a–167a. Judge Bauman nevertheless denied Plaintiffs’ Motions and improvidently granted MetLife Cross–Motion for summary judgment in flagrant disregard of the N.J. Const., N.J. Court Rules, and controlling case law. 167a–172a.

The 3d Cir relied upon a clearly incorrect docket entry to deny Petitioners’ appeals. 172a. Petitioners were thus compelled to Petition for a Writ of Mandamus (WoM–I) and Petition for a Writ of Certiorari. 173a–176a. MetLife’s failure to oppose WoM–I creates the presumption that MetLife were fully cognizant of the fact that the jurisdiction–transferring event (physical mailing) had *not* here occurred. 176a–179a. The SCt Clerk’s Office noted deficiencies in SCt Petition–I. 179a–180a. Petitioners were ordered to correct the Petition and re–file within 60 days. *Id.*

Counsel for FDIC–R filed an appearance in Dist Ct (DC) and moved to dismiss Petitioners’ WaMu Claims. 180a–181a.

MetLife–Counsel filed a wrongly–premised Proof of Mailing (“PoM–II”) and served Petitioners with a wrongly–premised Notice to Cure (“NTC–II”) purportedly pursuant to the Fair Foreclosure Act (“FFA”). 181a–183a.

The 3d Cir issued a per curiam order denying WoM–I in expressly stated reliance upon an incorrect text entry in the Dist Ct (NJ) docket. 183a–189a.

Petitioners responded to NTC–II as requested by MetLife–Counsel notwithstanding that (as discussed above) Petitioners had “contested” the Complaint. 189a–192a.

Petitioners filed, in the 3d Cir, a Petition for Panel Rehearing and *En Banc* Hearing (“Petition-II”) and, in Dist Ct (DC), Petitioners filed Opposition to M-II (Dismiss). 192a–194a.

The KKM Defs filed a procedurally deficient Motion for Summary Judgment (“KKM Defs SJ-I”). *Id.*

Petition-II was improvidently denied in flagrant disregard of controlling 3d Cir precedent. 194a. Petitioners corrected the deficiencies noted therein by the Clerk’s Office and re–filed SCt Petition–I. *Id.*

XII. This Petition for a Writ of Certiorari should be granted for the two independently–sufficient reasons discussed below and explicitly set forth in Rule 10(a) and Rule 10(c) respectively (Rule 14.1.(g))

A. There is a three–way split in the Circuits. The App Div is in conflict with the 3d Cir on the same important matter.

There is a 3–way split in the Circuits and the App Div is in conflict with the 3d Cir on the *same* important matter, namely, *when* does a District Court lose jurisdiction following its issue of a remand order, or, stated differently, at *what* point is a remand order “not reviewable on appeal or otherwise”? The Circuits and the App Div have developed conflicting answers to the question presented.

(1) Some courts have held that the “filing” of a remand order is the jurisdictional event which renders a remand order “not reviewable on appeal or otherwise.”

The 4th Cir has held “that [28 U.S.C.] § 1447 divests a district court of jurisdiction upon the entry of its remand order.”²¹ There is apparently “no binding circuit precedent”²² in the 8th Cir. The District Court for the N.D. of Iowa (Western Division) has nevertheless “conclude[d] that it is the *filing* of a remand order

²¹ *In re Lowe*, 102 F.3d 731, 735 (4th Cir. 1996).

²² *Aceves v. Northwest Iowa Pork*, 520 F. Supp. 3d 1102, 1105 (N.D. Iowa 2021).

pursuant to § 1447(c), not the clerical act of mailing it, that renders the order unreviewable.”²³ Two (2) District Courts in the 10th Cir have held similarly to *In re Lowe*: the District Court for the District of Kansas²⁴ and the District Court for the District of New Mexico.²⁵ One (1) District Court in the 11th Cir has “agree[d] with the approach taken by those courts which have held that a district court loses jurisdiction immediately upon the entry of a remand order.”²⁶

(2) Other courts – including the 3d Cir – have held that a District Court may reconsider its remand order at any time before the Clerk “physically mails” a certified copy thereof to the State Court.

The District Courts in the 8th Cir hold conflicting views on this important matter; specifically, the District Court for the N.D. Iowa (Cedar Rapids Division) holds that “the federal court is not completely divested of jurisdiction to reconsider or vacate the order of remand until the order of remand has been entered and a certified copy of the order has been mailed to the clerk of the state court”²⁷ – but *see* quotation above to *Aceves*.²² The 3d Cir holds that “a district court loses jurisdiction over a case once it has completed the remand by sending a certified copy of the remand order to the state court.”²⁸ The 2d Cir holds similarly.²⁹ The 5th Cir emphasizes that the mailing functions as a jurisdictional event with “legal significance” because remand

²³ *Ibid.* (emphasis added).

²⁴ *Aetna U.S. Healthcare, Inc. v. Hoechst Aktiengesellschaft*, 67 F. Supp. 2d 1242, 1245– 46 (D. Kan. 1999).

²⁵ *Pohl v. Junick*, No. CIV. 06– 0495 RB/RLP, 2006 WL 8443831, at *4 (D.N.M. Aug. 28, 2006).

²⁶ *Whiddon Farms, Inc. v. Delta and Pine Land Co.*, 103 F. Supp. 2d 1310, 1314 (S.D. Ala. 2000).

²⁷ *Cook v. J.C. Penney Co., Inc.*, 558 F. Supp. 78, 79 (N.D. Iowa 1983).

²⁸ *Trans Penn Wax Corp. v. McCandless*, 50 F.3d 217, 225 (3d Cir. 1995).

²⁹ *Shapiro v. Logistec USA, Inc.*, 412 F.3d 307, 312 (2d Cir. 2005).

orders are not “self-executing.”³⁰ The District Court for E.D. Michigan in the 6th Cir holds that “a district court retains jurisdiction to reconsider a remand order where a certified copy of the order has not yet been mailed to clerk of the state court to which the case is to be remanded.”³¹ The 9th Cir holds that a Remand Order “is not self-executing” and, accordingly, that “[t]he proper procedure for carrying the order of remand into execution would be by filing of a certified copy of the order in the state court.”³² The 7th Cir has held that “[t]he record does not reveal that the district court clerk mailed a certified copy of the remand order to the state court, a prerequisite to send the case back. See 28 U.S.C. § 1447(c).”³³

(3) A third set of courts has held that federal jurisdiction is divested when the state court receives the remand order and resumes jurisdiction.

The 1st Cir has held that 28 U.S.C. § 1447(d) bars reconsidering remand order once the state court resumes jurisdiction.³⁴ The District Court for the District of Kansas in the 10th Cir declined to follow the 1st Cir’s approach but did acknowledge that “[t]he difference between mailing and receipt is not necessarily irrelevant.”³⁵

(4) Finally, there is conflict on this important matter between the App Div and the 3d Cir.

³⁰ *Arnold v. Garlock, Inc.*, 278 F.3d 426, 437, 438 (5th Cir. 2001).

³¹ *Hubbard v. Combustion Engineering, Inc.*, 794 F. Supp. 221, 222 (E.D. Mich. 1992).

³² *Bucy v. Nevada Constr. Co.*, 125 F.2d 213, 217 (9th Cir. 1942) (citations omitted).

³³ *JO v. Alton Community Unit School Dist. 11*, 909 F.2d 267, 274 n.5 (7th Cir. 1990).

³⁴ *Fed. Deposit Ins. Corp. v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979).

³⁵ *Aetna U.S. Healthcare, supra*, 67 F. Supp. 2d at 1247 n.6.

The App Div holds that jurisdiction passes from the District Court to the State Court upon “the *grant* of a motion to remand to state court”¹⁹ (emphasis added). This is in conflict with Federal Law in the Third Circuit, which is that the physical mailing of a certified copy of the Remand Order – *not* “the grant of a motion to remand to state court”¹⁹ – is the key jurisdictional event which divests the Dist Ct of jurisdiction because, in this Circuit, a Remand Order is *not* “self-effecting.”³⁶

B. The courts below have decided an important question of federal law – *not* settled by this Court – by extending FIRREA’s jurisdictional grant to New Jersey’s State and Federal Courts *and* the 3d Cir, whereas 12 U.S.C. § 1821(d)(6) grants *exclusive* jurisdiction over the claims asserted in this matter to the “United States District Court for the District of Columbia and the district court for the district where [“WaMu”] ha{d] its principal place of business.”³⁷

MetLife filed Complaint. The 2-count Complaint asserted – on its face³⁸ – a claim (“WaMu Claim”) arising from transactions originated by the original mortgagee – WaMu.³⁹ On September 25, 2008, the Office of Thrift Supervision declared WaMu insolvent and appointed as “Receiver” the Federal Deposit Insurance Corporation (“FDIC”). The WaMu Claim was thereafter governed by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (codified as amended in the Federal Deposit Insurance Act, 12 U.S.C. § 1821(d)) (“FIRREA”).

³⁶ See *Trans Penn*, *supra*, 50 F.3d at 225 (citing *Hunt v. Acromed Corp.*, 961 F.2d 1079, 1081 (3d Cir. 1992); *Bucy*, *supra*, 125 F.2d at 213).

³⁷ *Trice v. Federal Deposit Insurance Corporation*, Civil Action No. 17-cv-1564 (TSC) (D.C. Nov. 28, 2022) (citing *Rosa v. Resolution Trust Corp.*, 938 F.2d 383, 391–92 (3d Cir.), *cert. denied*, 502 U.S. 981 (1991)).

³⁸ See *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citing *Gully v. First National Bank*, 299 U. S. 109, 112–113 (1936) (holding that “the ‘well-pleaded complaint rule’ [] provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint”)).

³⁹ “WaMu” refers to the original mortgagee: Washington Mutual Bank, F.A. (lka Washington Mutual Bank).

12 U.S.C. § 1821(d)(6) provides that only *two* Federal District Courts have jurisdiction to review the WaMu Claim: “United States District Court for the District of Columbia [“Dist Ct (DC)’] and the district court for the district where the financial institution has its principal place of business [“Dist Ct (WA)’].”⁴⁰

The WaMu Claim is, moreover, a “claim or action for payment from’ or ‘action seeking a determination of rights with respect to’ any ‘asset’ of a failed bank for which the FDIC is receiver”⁴¹ and, accordingly, *should* have been remanded to Dist Ct (DC) or Dist Ct (WA).⁴²

The courts below nevertheless decided an important question of federal law – *not* settled by this Court – by extending FIRREA’s restricted jurisdictional grant to New Jersey’s State and Federal Courts *and* the 3d Cir, *whereas* (it bears repeating) 12 U.S.C. § 1821(d)(6) grants *exclusive* jurisdiction over the WaMu Claim to the “United States District Court for the District of Columbia and the district court for the district where [“WaMu”] ha[d] its principal place of business.”⁴⁰

XIII. This Court does not review decisions *de novo* for errors of law. Nor does this Court review decisions for clear error. Nor does this Court review decisions for abuse of discretion. Nor does this Court review decisions for flagrant violations of the CJC and the RPC. The PH & SoMF at Appendix-O nevertheless contains many indisputable errors of law *and* clear errors *and* abuses of discretion *and* violations of the CJC and the RPC.

The Statement of Material Facts and Law (“SoMF”) set forth in Appendix-O argues that the Federal and State Courts have not addressed the question: *when* does

⁴⁰ *Trice, supra*, Civil Action No. 17-cv-1564 (TSC) (citing *Rosa, supra*, 938 F.2d at 391-92, *cert. denied*, 502 U.S. 981).

⁴¹ *Freeman v. F.D.I.C.*, 56 F.3d 1394, 1399-1400 (D.C. Cir. 1995).

⁴² “Dist Ct (WA)” refers to U.S. District Court for the Western District of the State of Washington – the district in which WaMu’s principal place of business was located.

a District Court lose jurisdiction following the issue of its remand order, or, stated differently, at *what* point is a remand order “not reviewable on appeal or otherwise”? (*See Rule 10(a)*). *Nor* has this Court settled the question: may the courts below decide an important question of federal law *not* settled by this Court by extending 12 U.S.C. § 1821(d)(6)’s exclusive jurisdictional grant to New Jersey’s State and Federal Courts *and* the 3d Cir? (*See Rule 10(c)*).

A. Petitioners’ attached filings discuss the Questions Presented *and*

On August 25, 2023, Petitioners filed Certification of Keith P. Sequeira in Support of Motion for Leave to Attach Exhibits to the Petition for Panel Rehearing and *En Banc* Hearing (“KS Cert Aug 25”).⁴³ KS Cert Aug 25 demonstrated:

- (1) that the jurisdiction-transferring event in this Circuit (physical mailing) did *not* occur and, therefore, that the Dist Ct *and* the 3d Cir *did* have jurisdiction to review the Remand Order; and
- (2) that the face of the Complaint sought a “determination of rights with respect to the asset[s] of a failed bank [WaMu] for which the FDIC is receiver”⁴⁴ and, therefore, that Sequeira-II (the Federal title for Foreclosure-III) should have been remanded to the “United States District Court for the District of

⁴³ A true and correct copy of KS Cert Aug 25 (w/o Exhibits) is attached hereto as Appendix-L.

⁴⁴ *Freeman v. F.D.I.C.*, 56 F.3d 1394, 1399–1400 (D.C. Cir. 1995) (quoting 12 U.S.C. § 1821(d)(13)(D), which provides that “except as otherwise provided in this subsection, no court shall have jurisdiction over . . . any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver”).

Columbia [Dist Ct (DC)] [or] the district court for the district where [WaMu] ha[d] its principal place of business”⁴⁵ (12 U.S.C. § 1821(d)(6)).

The Motion was granted. The *Petition* was denied. The 3d Cir’s denial of the Petition was in conflict with its own decisions and with the decisions of other Circuits and highlighted a three-way Circuit split on the question: *when* does a District Court lose jurisdiction following its issue of a remand order, or, stated differently, at *what* point is a remand order “not reviewable on appeal or otherwise”? – *upon filing? upon physical mailing? upon receipt? or upon the grant of a motion to remand?*

B. the timeliness of this Petition

On October 16, 2023, Petitioners filed a letter brief in support of Motion to Clarify that Appeal-II is Active or, Alternatively, Motion Requesting a Statement of Reasons for the Dismissal of Appeal-II (“KS Mot Oct 16”).⁴⁶ KS Mot Oct 16 demonstrated that Petitioners had timely appealed *two* distinct and separate orders of the Dist Ct:

On February 16, 2023, Petitioners appealed (“NoA-I”) (ECF No. 34) the Dist Ct’s Text Order dated February 2, 2023 (ECF No. 33) denying their Motion for Extension of Time to File a Notice of Appeal (“M-I (Leave)”) (ECF No. 29).

On August 25, 2023, Petitioners appealed (“NoA-II”) (Doc. 18) the Dist Ct’s Order dated August 3, 2023 (ECF No. 39) directing the Clerk to *terminate* Motion to Remand the Above-Referenced Matter to the U.S. District Court for the District of

⁴⁵ *Trice, supra*, Civil Action No. 17-cv-1564 (TSC) (citing *Rosa, supra*, 938 F.2d at 391–92, *cert. denied*, 502 U.S. 981).

⁴⁶ A true and correct copy of KS Mot Oct 16 (w/o exhibits and re-paginated) is attached hereto as Appendix-N.

Columbia (“Dist Ct DC”) (“M-II (Remand)”) (ECF No. 29) and further directing the Clerk to *keep the case closed*.

NoA-I was dismissed. NoA-II was *not* addressed. KS Mot Oct 16 thus requested clarification of the active status of Appeal-II or, alternatively, a statement of the 3d Cir’s reasons for dismissing (the distinct and separate) Appeal-II.

On November 16, 2023, the 3d Cir summarily denied KS Mot Oct 16. This Petition for Certiorari has thus been timely submitted within 90 days of the 3d Cir’s order pursuant to *Rule 30*.

XIV. Stage of State Court Proceedings (Rule 14.1.(g)(i))

The trial divisions of the Superior Court of New Jersey have granted summary judgment seemingly believing that the issue of jurisdiction is a mere “technicality.” The App Div has refused to address the issue of jurisdiction and has repeatedly denied without prejudice Petitioners’ notices of appeal and motions for leave to appeal as “interlocutory”.

XV. Basis for Federal Jurisdiction in the District Court (Rule 14.1.(g)(ii))

Petitioners’ WaMu Claims are cognizable under Federal Law pursuant to 12 U.S.C. § 1821(d) *et seq.* (FIRREA) for the reasons discussed above. 12 U.S.C. § 1821(d)(6) provides that only *two* Federal District Courts have jurisdiction to review the WaMu Claims: “[Dist Ct (DC)] and the district court for the district where the financial institution has its principal place of business [“Dist Ct (WA)’].”⁴⁷ Jurisdiction lies with Dist Ct (DC).

XVI. Conclusion (Rule 10(a), Rule 10(c))

⁴⁷ *Trice, supra*, Civil Action No. 17-cv-1564 (TSC) (citing *Rosa, supra*, 938 F.2d at 391-92, *cert. denied*, 502 U.S. 981).

This Petition for a Writ of Certiorari should be granted because the Circuits are split (*see Rule 10(a)*) and because New Jersey's Federal and State Courts have expanded 12 U.S.C. § 1821(d)(6)'s restricted jurisdictional grant in violation of FIRREA and in a manner never addressed by this Court (*see Rule 10(c)*).

Respectfully submitted.

Dated: *April 5, 2024.*

Signature: *S/ Keith P. Sequeira*

Signature: *S/ Helen D. Sequeira*

Keith P. Sequeira

Helen D. Sequeira

Petitioners