

CASE NO 24-205

IN THE SUPREME COURT OF THE UNITED STATES

Michael Weiss, as Executor of  
Estate of Jane L. Marsh  
Petitioner

vs.

Peggy Pei-Lin, Yi-Ming Su, DOES 1-10  
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO U.S.  
COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING OF DENIAL OF WRIT OF  
CERTIORARI

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<u>Snider v. Basinger</u> (1976) 61 Cal.App.3d 819 [132 Cal.Rptr. 637] .....	<u>12</u>
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<u>Ward v. Board of County Com'rs of Love County, Okl.</u> (1920) 253 U.S. 17 [40 S.Ct. 419, 422, 64 L.Ed. 751] ..	<u>4</u>
<u>Watters v. Wachovia Bank, N.A.</u> (2007) 550 U.S. 1 [127 S.Ct. 1559, 167 L.Ed.2d 389] .....	<u>10</u>

#### STATUTES

12 U.S.C. § 25b(b)(1)(B) .....	<u>11</u>
28 U.S.C. 2072 .....	<u>10</u>
28 U.S.C. 2106 .....	<u>6</u>
Cal. Prob.Code 200. ....	<u>13</u>

#### **PETITION FOR REHEARING & GROUNDS**

1. Under U.S.S.Ct. Rule 44.2 this is a petition for rehearing regarding denial of a petition for certiorari on substantial grounds not previously presented, namely of the nationwide interest of surviving widows under a National Banking Act (NBA) trust deed succession clause. Under petitioners complaint that succession clause confers a substantive right to a reconveyance deed if they seek to acquire the property of their deceased husbands by repaying the underlying debt and complying with terms.

#### **I. ART. 3 SEC. 2 OBLIGATION TO DO JUSTICE**

2. Ward v. Board of County Com'rs of Love County, Okl. (1920) 253 U.S. 17 [40 S.Ct. 419, 422, 64 L.Ed. 751] held that the duty to do justice makes all private persons, courts, and government actors, potentially liable if they don't. The remedy under 42 USC 1983 should be restitution of property under the U.S. Const Due Process Clause if it was caused by taking with full notice that Congress granted property interests, or immunities regarding that property. Property so taken makes the taker a constructive trustee. Indeed Compl. Exh 1 @ para. 10 succession right interest, which was followed up with a reconveyance deed to the person entitled, are protected sticks in the bundle of property rights under the U.S. Due Process Clause.

3. Hardy v. Mayhew (1910) 158 Cal. 95, 104 [110 P.

113], *Tennant v. John Tennant Memorial Home* (1914) 167 Cal. 570 [140 P. 242] and *Brant v. Virginia Coal & Iron Co.* (1876) 93 U.S. 326 [23 L.Ed. 927] all hold that if a decedent did not own property that whoever receives it is a constructive trustee for the real owner. In our case California Probate Code 6600(b) expressly excluded Monroe F. Marsh's inter vivos trust deed; and, Civil Code sections 1708, 3520, 2223, 2224, and 1712 are its constructive-involuntary trustee statutes.

4. *Faitoute Iron & Steel Co. v. City of Asbury Park*, N.J. (1942) 316 U.S. 502, 514 [62 S.Ct. 1129, 86 L.Ed. 1629] echoed its *Davis* holding that the Constitution is intended to preserve practical and substantial rights, not to maintain theories.

## **II. JANE L. MARSH IS SUCCESSOR AS A MATTER OF NBA LAW**

5. The lower federal courts in this case ultimately held that petitioners Complaint was not plead properly; but, if this Court takes judicial notice of the trust deed terms and parties found in Complaint Exh 1 it may do justice by a grant of certiorari, vacate and remand (GVR) order with directions to the lower federal courts to reconsider or declare that Jane L. Marsh was the FSB trust deed civil successor of her deceased husband Monroe F. Marsh under trust deed paragraphs 6.1, 10, 12 and 16. Defendant's had constructive knowledge of *Mesick v. Sunderland* (1856) 6 Cal. 297, 315, which held that the California

Recording Act establishes notice of encumbrances and conveyances by operation of law in place of the constructive notice evidential principle. F.R.A.P 2, F.R.C.P. 1, 28 U.S.C. 2106, as well as every order of this court creating and amending those rules prohibited the federal courts from applying them if such application would result in a miscarriage of justice or prejudice to a litigant's substantive rights; and, a miscarriage of justice is a failure to do justice which is a matter of importance under this Court's rule 44.2. Rigid and mechanical dismissal with no opportunity to amend under a sua sponte district court OSC instead of a defendants F.R.C.P. 12 motion, followed by a unauthorized Clerk appointment of a 9th Cir summary panel disposition was hence not an adequate or independent federal ground of decision because they were in conflict with Congressional intent under the NBA and FSB trust deed terms.

6. FSB trust deed page 1 paragraph 2 provided in part "The beneficiary is Financial Freedom Senior Funding Corporation, a Subsidiary of Lehman Brothers Bank, FSB... whose address is...". FSB Trust Deed page 1 top left specified FSB in the recording requested area; and, at the top right it showed the file stamp stating "Recorded in official records, County of Orange... 10/27/03." FSB trust deed paragraph 10 provides in part "The agreements of this security instrument and the agreement shall be final and benefit... me and my.... heirs, successors, and assigns."

Jane L. Marsh was a successor assignee because she repaid the debt and complied with terms. Jane L. Marsh was an heir under Probate Code 44. California Civil Code 2943(a)(4) defined “entitled” to include the successor in interest of the trustor. Civil Code 1039 defined “transfer” as an act of the parties (eg assignment), or of the law (eg statutory successor) by which title to property is conveyed from one living person to another. FSB trust deed paragraph 12 provided in part “This security instrument will be governed... by applicable state and federal law.” Paragraph 19 provided in part “All of your remedies under the security instrument are cumulative to any other right or remedy... which is afforded by equity..”. FSB Trust deed page 2 paragraph one provided in part “I irrevocably grant and convey to trustee, in trust, with power of sale the following described property...”. FSB trust deed page 1 paragraph 3 stated in part “The maturity events in section 6 of the agreement... are as follows: (a) the sale, conveyance, transfer of any part of the property... by operation of law...”

7. *Estate of Cowart v. Nicklos Drilling Co.* (1992) 505 U.S. 469, 477 [112 S.Ct. 2589, 120 L.Ed.2d 379] and *U.S. v. Byrum* (1972) 408 U.S. 125, 136 [92 S.Ct. 2382, 33 L.Ed.2d 238] recognized that both in legal and general usage the meaning of the word “entitlement” includes a right or benefit for which a person qualifies; and, does not depend upon whether the right has been acknowledged or adjudicated. It means only that the person satisfies the

prerequisites attached to the right and that he becomes a person entitled at the moment her right vests. Jane L. Marsh satisfied all the FSB trust deed contract prerequisites by paying the underlying \$640,000 debt plus the fee to record the reconveyance in the Orange County recorder’s office and submitting proof to the lender and the trustee that she was the surviving spouse of the trustor Monroe F. Marsh and hence his heir and successor assignee. It is undisputed that neither the defendants, nor Monroe F. Marsh or his co-executors, satisfied or perfected said prerequisites to a reconveyance deed. Defendants knew that FSB trust deed paragraph 6.1 provided in part: “If I fail to perform any of my material obligations... or if legal proceedings are commenced that may significantly affect your rights in the property such as proceedings in probate... then you may.... do whatever is necessary.” Defendants knew that FSB trust deed page 1 paragraph 3 stated in part: “the maturity events in section 6 of the agreement... are as follows: (a) the sale, conveyance, transfer of any part of the property... by operation of law... without lender’s prior written consent.” Defendants knew that FSB trust deed page 1 paragraph 3 stated in part: “The agreement... provides for... the maturity events as set forth in section 6... as follows: ... (b) the borrower’s death.” Defendants thus knew they were thus disentitled to receive a Grant Deed from Monroe F. Marsh’s co-executors.

8. *Free v. Bland* (1962) 369 U.S. 663, 669 [82 S.Ct.

1089, 8 L.Ed.2d 180] held that the treasury was authorized to make bonds attractive to investors and one of the inducements was a survivorship provision which was a convenient method of avoiding complicated probate proceedings. This court in *Bland* held that viewed realistically the state community property law had rendered a NBA survivorship clause meaningless. Borrowers nationwide such as *Monroe*, would hesitate to enter into business with Federal Savings Bank operating subsidiaries if their executors after their defaults could frustrate the FSB trust deed substantive succession clause rights.

9. FSB trust deed paragraph 16 provided in part "Upon payment... you will request the trustee to reconvey... The trustee will reconvey... to the person or persons legally entitled to it." *Carpenter v. Rannels* (1873) 86 U.S. 138, 145 [22 L.Ed. 77, 19 Wall. 138] held that such a habendum clause had already been decisively construed by its *Hogan v. Page* (1864) 69 U.S. 605 [17 L.Ed. 854] case to refer to those who were factually entitled through perfection and satisfaction of the interest by complying with the contract prerequisites, and that federal law presumes that a trustee conveys to those to whom his duty is owed legally or equitably because the person was entitled to it. See also *French v. Edwards* (1874) 88 U.S. 147, 149-150 [22 L.Ed. 534]. So does California law, see *Machenzie v. Los Angeles Trust & Sav. Bank* (1918) 39 Cal.App. 247, 250-251 [178 P. 557].

10. *Thoroughbred Horsemen's Ass'n v. Nat'l Collegiate Athletic Ass'n* (2018) 584 U.S. 453, 477 [138 S.Ct. 1461, 200 L.Ed. 2d 854] held that preemption is based on the Supremacy clause and echoed its holding from its *Armstrong* case that the Supremacy Clause supplies a rule of decision for the regulation of private conduct and evenhanded joint private-State conduct because the U.S. Constitution confers on Congress the power to regulate individuals which the prior Articles Of Confederation did not (*Id.* p. 472).

11. *Watters v. Wachovia Bank, N.A.* (2007) 550 U.S. 1, 7 [127 S.Ct. 1559, 167 L.Ed.2d 389] held that operating subsidiaries of national banks have the same statutory powers under the NBA as the federal banks themselves. *McCarty v. McCarty* (1981) 453 U.S. 210, 222-223 [101 S.Ct. 2728, 69 L.Ed.2d 589] held that California community property law was not competent to provide a substitute for, nor override a survivorship provision in a Federal savings bond. Petitioner contends same for a FSB trust deed para. 10 successor clause in this case under 1983.

12. Both *Ridgway v. Ridgway* (1981) 454 U.S. 46, 59 [102 S.Ct. 49, 70 L.Ed.2d 39] and *Brown v. Hotel and Restaurant Employees and Bartenders...* (1984) 468 U.S. 491, 503 [104 S.Ct. 3179, 82 L.Ed.2d 373] held that federal statutes such as the NBA do confer substantive rights on the parties. 28 U.S.C. 2072 prohibits claim processing rules from abridging such substantive rights. In this case surviving widows like *Jane L. Marsh* would never agree to exercise their

substantive rights under FSB trust deed successor clause paragraphs 6.1, 10, 12, 16, 17 and 19 if they knew strangers would be allowed by purchase in probate to delay or deprive them of such substantive rights. In our case DC ECF #62 ordered petitioner to make a viable pleading showing; but, Exhibit 1 to the complaint incorporated therein was the trust deed which already had made its own viability showing by its paragraphs 6.1, 10, 12, 16, 17 and 19. F.R.C.P. 10(c) provides that exhibits to a pleading are a part of the pleading for all purposes. Not one word of fact taken from anything expressed in Complaint exhibits 1 through 10 was ever cited by the lower federal courts. This type of summary adjudication substantially interferes with FSB trust deed clauses 6.1, 10, 12, 16, 17 and 19. "A court applying the Barnett Bank standard must make a practical assessment of the nature and degree of the interference caused by a state law" (Id p. 219-220). Under 12 U.S.C. § 25b(b)(1)(B) both comparisons for and against inconsistency were to be grounded on the nature and degree of the state laws' alleged interference with the national banks' exercise of their powers based on the text and structure of the laws, comparison to other precedents, and common sense. See, e.g., ...First National Bank of San Jose v. California, 262 U.S. 366, 370, 43 S.Ct. 602 (1923) (reasoning that customers "might well hesitate" to subject their deposits to "unusual" California law). In this case the lower federal courts in an unusual manner attempted to apply California law by dicta

categorically determining that the probate court had already decided that Jane L. Marsh had no interest in the property and also that sales in probate proceedings are never state action. That was error because they cited no 1983 precedent for such unusual categorical, per se, inflexible, or rigid determinations. It was unusual for the lower trial court to moot out petitioner's entire case, and the 9th Circuit to affirm, while the existing default of defendant's continues as of today. This case is unusual not due to a failure to plead; but, the federal courts failure to read the names and the contents in the trust deed and Jane L. Marsh's proof of compliance, perfection, and entitlement found in Complaint Exh's 1-10, as contrasted with the inconsistent Grant Deed to defendants.

13. Snider v. Basinger (1976) 61 Cal.App.3d 819, 823 [132 Cal.Rptr. 637], Peterson v. Wells Fargo Bank, N.A. (2015) 236 Cal.App.4th 844, 854, [186 Cal.Rptr.3d 842], Nilson v. Sarment (1908) 153 Cal. 524, 530 [96 P. 315], Conard v. Atlantic Ins. Co. of N.Y. (1828) 26 U.S. 386, 441 [7 L.Ed. 189], Clark v. Williard (1934) 292 U.S. 112, 121 [54 S.Ct. 615, 78 L.Ed. 1160] and U.S. Oil & Land Co. v. Bell (1915) 219 F. 785, 791 hold the same as California Civil Code 2941 (b)(1)(B)(i) operation of law principle, that when the obligations secured by a trust deed are satisfied that whatever title the trustor had in the property automatically reverts in the trustor or his successors without a reconveyance deed because the reconveyance deed is only to clear the title of record.

The Conard case applied the automatic reversion principle to a mortgage under a resulting trust theory. The Clark case holding the successors title is the consequence of a right of succession established by the law of its creation. Statutory successions are creatures of statute, not adjudication by courts. The Clark case held that under the Full Faith and Credit Clause such statutes must be honored while adjudications need not. Civil Code 2941(b)(1)(B)(i) is a statutory succession statute. FSB trust deed paragraphs 10 and 16 are the contractual civil succession clauses concerning whatever interest Monroe F. Marsh had in the Irvine condo. Under the relation back principle, Jane L. Marsh's succession clause interest vested as of October 2002. Monroe's co-executors were jurisdictional or Civil Code 2941 right to sell to defendants.

14. Green v. Watkins (1822) 20 U.S. 27, 32 [5 L.Ed. 388], held that seisen in deed is enough to issue a writ of right.

15. Estate of Welfer (1952) 110 Cal.App.2d 262, 264-265 [242 P.2d 655] held that the word "successor" in Cal. Prob.Code 200 means succession by descent or intestacy. Rutland Marble Co. v. Ripley (1870) 77 U.S. 339, 351 [19 L.Ed. 955] held that succession in title is different from succession from a decedent.

16. WHEREFORE petitioner pray this court grant its petition for rehearing regarding its denial of petition for certiorari. After Seila Law LLC v. Consumer Financial Protection Bureau (2020) 591 U.S. 197 [140 S.Ct. 2183, 207 L.Ed.2d 494] was

decided, Congress has still not amended the statute at issue there but is still working on it, and the Secretary of Treasury has refused to help petitioner. This federal case has been pending for 5 years and petitioner has awaited new legislation. The trial court never perfected any final judgment. Even District Court interlocutory orders were not perfected due to failure to provide F.R.C.P. 5(b) notice of same. The clerks appointment of the appellate panel defeated perfection of that appointment. A remand with directions to the trial court to allow amendment may protect petitioner against any possible adverse time delay issues.

RESPECTFULLY SUBMITTED

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**CERTIFICATE OF COUNSEL U.S.S.Ct. Rule**

**44**

I Michael Weiss, attorney for the petitioner hereby certify in accordance with this U.S.S.Ct. Rule 44(2) that the grounds for this petition for rehearing of denial of certiorari are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Further that this petition for rehearing is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 9, 2025 at Irvine, California.

*Michael Weiss*

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Michael Weiss

## WORD COUNT & CERTIFICATE OF COMPLIANCE

I, Michael Weiss, declare

I am attorney for Petitioner herein.

This Petition for Rehearing on Denial of Certiorari complies with this Court's rules regarding the word count which is 2997 as counted by Word Perfect 2021 Pro software.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11-25-2024 at Irvine, CA.

*Michael Weiss*

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Michael Weiss