

No. _____

**In The
Supreme Court of the United States**

____—◆—_____
AMINATA WILLIAMS,

Petitioner,

v.

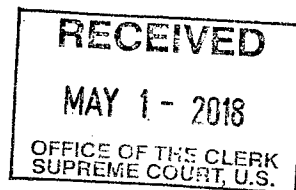
21ST MORTGAGE CORPORATION, et al.,

Respondents.

____—◆—_____
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

____—◆—_____
PETITION FOR WRIT OF CERTIORARI

____—◆—_____
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PARTIES TO THE PROCEEDING

1. Aminata Williams
2. 21st Mortgage Corporation
3. OCWEN Loan Servicing
4. U.S. Bank, N.A.
5. Residential Funding Company, LLC

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The unreported Opinion of the United States Court of Appeals for the Fourth Circuit which is set forth in the Appendix at App. 1.

JURISDICTION

The opinion of the United States Court of Appeals for the Fourth Circuit was issued on November 30, 2017. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

15 U.S.C. §1635 – Right of rescission as to certain transactions

(a) Disclosure of obligor's right to rescind

Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the

Petitioner also filed an emergency motion to stay the foreclosure action pending in the Circuit Court for Prince George's County. The motion was denied by the Circuit on the basis that 15 U.S.C. §1635 is inapplicable to mortgage loans and Petitioner's home loan re-finance and that Petitioner has not shown good cause for her failure to timely file the motion to stay and/or dismiss. (JA116). Petitioner filed a timely Notice of Appeal to the Maryland Court for Special Appeals.

Petitioner filed an amended complaint on May 31, 2016. On June 21, 2016, Appellee, 21st Mortgage Corporation filed a motion to dismiss Petitioner's first amended complaint for failure to state a claim, which was joined by OCWEN Loan Servicing. Petitioner filed an opposition on July 11, 2016 and replies were filed on August 15, 2017. On March 1, 2017, the trial Court issued a paper order directing the filing of state court pleadings and on March 21, 2017, Counsel for Appellee 21st Mortgage Corporation filed the state court pleadings.

On March 27, 2017, the Court issued a memorandum opinion granting the motion to dismiss on the basis of res judicata. A timely notice of appeal was filed on April 18, 2017 to the United States Court of Appeals for the Fourth Circuit.

While the Appeal was pending, the Maryland Court of Special Appeals issued an opinion in the Appeal to the Order of Circuit Court denying Petitioner's Emergency Motion to Stay. The Maryland Court of Special Appeals disagreed with the Circuit Court of

More than sixty-seven (67) days after receipt of the letter of rescission, Homecomings Financial acknowledged Petitioner's notice of rescission by letter dated November 25, 2008 but disputed the rescission. Despite the rescission, Homecomings Financial and/or Mortgage Lenders Network USA, Inc. reassigned the note and mortgage to other entities.

21st Mortgage Corporation purporting to be the current holder of the Note and Deed of Trust is continuing to prosecute a foreclosure action in the Circuit Court for Prince George's County based on the rescinded note and deed of trust. Based on Land Records documents, Residential Funding Real Estate Holdings, LLC transferred its interest in the Deed of Trust to Residential Funding Company, LLC a different legal entity on September 11, 2012. Starting on September 11, 2012, Residential Funding Real Estate Holdings, LLC had no interest in the Deed of Trust or Note, yet on June 17, 2013, Residential Funding Real Estate Holdings, LLC purported to assign all beneficial interest in and to the subject Deed of Trust unto 21st Mortgage Corporation. At the time of the purported assignment on June 17, 2013, Residential Funding Real Estate Holdings, LLC had no interest in the Note and Deed of Trust. The appointment of Trustee and commencement of foreclosure action commenced with the aforesaid assignment, prior to another assignment on October 24, 2013.

The court further stated that Petitioner has not shown good cause for her failure to timely file the motion to stay and/or dismiss. (JA116).

of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.” The security interest on 13107 Ogles Hope Drive, Bowie, Maryland 20720 is void as a matter of law based on 12 C.F.R. §226.23(d) and 15 U.S.C. §1635(b). The unanimous Supreme Court decision in *Jesinoski* also makes clear that the Act “disclaims the common-law condition precedent to rescission at law that the borrower tender the proceeds received under the transaction. 15 U.S.C. §1635(b)” *Id.*

The District Court in its decision, which the Fourth Circuit found no error, relied the Fourth Circuit’s decisions in *American Mortgage Network, Inc. v. Shelton*, 486 F.3d 815 (4th Cir. 2007) and *Gilbert v. Residential Funding LLC, et al.*, 678 F.3d 271 (4th Cir. 2012) which predated *Jesinoski*. The Fourth Circuit by finding no error with the District Court’s decision relying upon *Gilbert* and *Shelton* also misconstrued this Court’s holding of *Jesinoski* by limiting the holding. The District Court incorrectly held that *Jesinoski* “simply addresses the question of whether notice needs to be filed within three years” and “does not change the holding in *Shelton* and *Gilbert*”. Based on the District Court’s limited reading of *Jesinoski*, it concluded that Petitioner was not likely to prevail on the merits and therefore denied the motion for preliminary injunction.

Petitioner did not file a claim for rescission but instead was seeking for the District Court to declare and/or clarify the rights of parties to the security interest after rescission. *Jesinoski* makes it clear that

action in which the borrower raises inadequate disclosure as an affirmative defense. Section 1635(g) makes clear that a court may not only award rescission and thereby relieve the borrower of his financial obligation to the lender, but may also grant any of the remedies available under §1640 (including statutory damages). It has no bearing upon whether and how borrower-rescission under §1635(a) may occur.”

This Court further stated that

“[T]he clear import of §1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent §1635(b) alters the traditional process for unwinding such a unilaterally rescinded transaction, this is simply a case in which statutory law modifies common-law practice.”

Based on the foregoing holdings in *Jesinoski*, the decisions in *Shelton* and *Gilbert* were overruled to the extent that it required for the Lender to acquiesce in the rescission or a court action to bring it about. Thus, it is Petitioner’s position that after *Jesinoski*, a Notice of Rescission causes the security interest to become void and triggers the sequence of events laid out in subsections (d)(2) and (d)(3). Contrary to the District Court’s decision, Petitioner was not required to bring an action to enforce rescission as was made clear by *Jesinoski*.

reason for misapplication or misinterpretation of the statute.

Contrary to the Court's decision, Appellee's challenge to the rescission is barred by statute of repose, laches, statute of limitation, collateral estoppel, and res judicata. Respondents' dilatory tactics caused it not to timely challenge Petitioner's rescission in the bankruptcy proceeding prior to her discharge and the case being closed. Respondents should have brought their cause of action to challenge the rescission or enforce the loan agreement or return property within (4) years of Petitioner's rescission of September 19, 2008, pursuant to 15 U.S.C. §1635(a). Respondents were required to bring its cause of action on or before September 18, 2012 but failed to do so. As a result, their right to challenge Petitioner's position is forever barred.

The District Court incorrectly found that there was no rescission. The District Court's other reason for determining that Petitioner is unlikely to prevail on the merits, is the conclusion that Petitioner lacked the ability to tender back the loan proceed. However, the Supreme Court stated in the Jesinoski decision that the issue of rescission as it relates to TILA has nothing to do with common law. As discussed in the preceding section, the Supreme Court unequivocally stated:

"[T]he clear import of §1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent §1635(b) alters the traditional process for unwinding such a **unilaterally rescinded transaction**, this is simply a case

In our system of justice, it is the aggrieved party that brings a lawsuit. In this case, when Petitioner by rescinding the loan pursuant to TILA on September 19, 2008, Respondents became the aggrieved party and were required to file a lawsuit to contest the rescission. Since Petitioner rescinded the loan on September 19, 2008, the Note and Deed of Trust became void as a matter of law and no contest of the rescission ensued. As provided in 12 C.F.R. §226.23(d) and 15 U.S.C. §1635(b) the “security interest giving rise to the right of rescission becomes void and the consumer shall not be liable for any amount, including any finance charge.” The security interest on 13107 Ogles Hope Drive, Bowie, Maryland 20720 is void as a matter of law based on 12 C.F.R. §226.23(d) and 15 U.S.C. §1635(b). The unanimous Supreme Court decision in *Jesinoski v. Countrywide Home Loans, Inc.*, 135 S.Ct. 790, 190 L.Ed.2d 650 (2015) also makes clear that the Act “disclaims the common-law condition precedent to rescission at law that the borrower tender the proceeds received under the transaction. 15 U.S.C. §1635(b).”

Petitioner upon exercise of the right of rescission, “is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission.” 15 U.S.C. §1635(b). 15 U.S.C. §1635(b) further states that:

Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise, and shall

property on Schedule A and listed the interest of the then existing lender, GMAC Mortgage, as an unsecured debt. On August 12, 2010, the Bankruptcy Court issued an Order Discharging Debtor under 11 U.S.C. §727. Pursuant to said discharge, the unsecured interest of the pertinent lender in and to the debt evidenced by the said Note, and/or of any person or entity subsequently acquiring an interest in the same by assignment or otherwise, was discharged in its entirety.

2. The Court Should Grant the Writ because the Doctrine of Res Judicata does not Bar Petitioner's Claims

Petitioner's claims for declaratory judgment, permanent injunction and fraud are not barred by Doctrine of Res Judicata. Although "[I]t is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered", res judicata is inapplicable in this case. *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984); see also *Allen v. McCurry*, 449 U.S. 90, 96 (1980).

In Maryland, the doctrine of res judicata precludes the relitigation of a suit if (1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action. The overarching purpose of the

res judicata is not satisfied because there has been no final judgment on the merits in the case in the Circuit Court for Prince George's County. See *Hohensee v. Minear*, 259 Md. 603, 607 (1970). The District Court is clearly in error that the Circuit Court's denial of Petitioners' motion to stay and/or dismiss the foreclosure action is a final judgment with res judicata effect. A denial of a motion to dismiss or summary judgment is not a final judgment on the merits because the case would still proceed to litigation and final judgment. Moreover, a denial of a motion to dismiss and/or stay foreclosure sale is not a final judgment for the purposes of res judicata.

The Fourth Circuit incorrectly held that it found no error in the District Court order which incorrectly found that Petitioners' claims for injunctive relief, declaratory judgment and fraud which were separate from the Motion to stay and/or to dismiss foreclosure sale were barred by res judicata. Also, Appellees did not argue in their motion to dismiss that the claims are barred by res judicata.

Moreover, even if it is assumed that the District Court wanted to dismiss the claims based on collateral estoppel, the doctrine is still inapplicable for several reasons. Under doctrine of collateral estoppel also known as issue preclusion, "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Murray Int'l Freight Corp.*

United States District Court and a decision had already been entered by the United States District Court on the preliminary injunction on May 3, 2016.

The second element is not satisfied because there is no final judgment on the merits. The law in Maryland is clear that, “a Circuit Court’s denial on a motion to dismiss an order to docket a foreclosure is a final determination on the merits sufficient to invoke issue preclusion,” and the “failure to file [an] exception to [a] foreclosure sale or take an appeal from [a] Circuit Court’s judgment ratifying [a] foreclosure sale render[s] [a] ratification of sale a final judgment on the merits.” *Coleman v. Countrywide Home Loan, Inc.*, 2010 WL 5055788, at *3 (D. Md. Dec. 3, 2010).

In this case, there was no foreclosure sale and there has been no foreclosure sale or ratification of the foreclosure. Most importantly, the order denying Petitioner’s motion to dismiss and/or stay the foreclosure case in the Circuit Court of Maryland for Prince George’s County was not a final judgment although appealable. As a general rule, neither *res judicata* nor collateral estoppel comes into play unless the ruling upon which it is based was either itself a final judgment or was rendered in a proceeding that culminated in a final judgment. See *Cook v. State*, 281 Md. 665, 669, 381 A.2d 671, cert. denied, 439 U.S. 839, 99 S.Ct. 126, 58 L.Ed.2d 136 (1978). As the *Cook* Court observed, however, “[f]inality is a concept which does not lend itself to concise delineation.” *Id.*, 669, 381 A.2d 671. The case relied upon by the United States District Court

permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action for tort or other wrongful act against a defendant and that equitable relief is appropriate. A permanent injunction is not issued to maintain the status quo but is a final judgment on the merits.

Similarly, in this case, due to the summary nature of the proceeding without discovery and/or opportunity for a hearing, the Maryland Circuit Court Judge incorrectly interpreted 15 U.S.C. §1635 as being inapplicable to mortgage loans and Petitioner's home loan refinance. On appeal the Maryland Court of Special Appeals held that 15 U.S.C. §1635 was applicable to Petitioner's mortgage loan refinance but affirmed the judgment based solely on the fact that the motion was untimely. That being the case, it supports Petitioner's argument that she did not have a full and fair opportunity to litigate the issues which makes collateral estoppel inapplicable under the facts. Petitioner was not granted an opportunity to fully and fairly litigate the issues raised in its motion to dismiss and/or stay because it was a summary proceeding without opportunity for discovery, oral hearing, or development of the issues, which is manifested in Judge Clarke of the Circuit Court for Prince George's County stating in her Order denying the motion to dismiss that (1) the statute is inapplicable to residential mortgages; (2) the motion was untimely; (3) oral hearing will not be granted.

Collateral estoppel did not bar Petitioner's claims based on the facts of this case.

