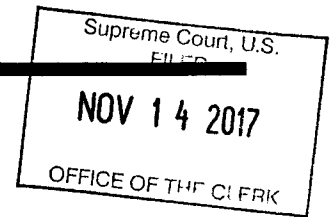


ORIGINAL

17-6831  
No. \_\_\_\_\_



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In The  
Supreme Court of the United States

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PAMELA S. OWEN,

*Petitioner,*

v.

FEDERAL HOUSING FINANCE AGENCY ET AL.,

*Respondents.*

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On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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PAMELA S. OWEN  
3912 NE 57<sup>th</sup> Avenue  
Vancouver, WA 98661  
(360) 991-4758  
[pamela.owen99@gmail.com](mailto:pamela.owen99@gmail.com)  
*Petitioner*

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## QUESTIONS PRESENTED

1. Does the State of Washington violate basic principles of constitutional due process of law when its courts hobbles, ad hoc, State statutes and unknown court procedures to create the existence of jurisdiction to support the issuance of *ex parte* default orders and judgments that conveys Petitioner's superior interest or estate without notice and a hearing, or does the limitations of the Fourth, Fifth and Fourteenth Amendment and this Court's holdings in *Brown v. Barry*, 3 U.S. (3 Dall.) 365 (1797) and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652 (1950) no longer apply?

2. Does the magnitude of the holdings of the Federal District Court and Court of Appeals violate Article III and the Fourth and Fifth Amendments of the Federal Constitution when finding no Federal constitutional due process and "state action" civil rights issues are presented because Petitioner remains in possession of her home, or does the limitations of U.S. Const. Article III and the Fifth Amendment and this Court's holdings in *Stacy v. Thrasher*, 47 U.S. 6 How. 44, 60 (1848); *Shelley v. Kraemer*, 334 U.S. 1, 13-14 (1948); *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 338-39 (1969); *Fuentes v. Shevin*, 407 U.S. 67, 70-71 (1972); *North Georgia Finishing, Incorporated v. Di-Chem, Inc.*, 419 U.S. 601 (1975); *Lugar v. Edmondson Oil Company*, 467 U.S. 922, 934, 940-42 (1980); and *Edmondson v. Leesville Concrete Company*, 500 U.S. 614 (1991) no longer apply?

3. Do the decisions of the Federal District Court and Court of Appeals, granting summary judgment to Respondent Sheriff on grounds unrelated to the Sheriff's pleading of qualified immunity, violate this Court's doctrinal concepts that qualified immunity protects an official from trial and the burdens of litigation and discovery, including amendment of the action, or does Title 28 U.S.C. § 2679(b)(2); Rules 1 and 15, Federal Rules of Civil Procedure (Fed. R. Civ. P.) and the Court's holdings in *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982); *Butz v. Economou*, 438 U.S. 478 (1978) and *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985), no longer apply?

4. Does the gravity of the dismissal of Petitioner's original complaint by the Federal District Court and Court of Appeals, as a sanction for failure to amend, operate to deny constitutional due process when considered in the light of the posture of the case stated in the three previous issues, or does U.S. Const. Article III, the Fourth and Fifth Amendments and Fed. R. Civ. P., Rules 1 and 15 no longer apply?

**PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT**

Petitioner is a private individual and was the Plaintiff below.

Respondents, who were Defendants below, are: Federal Housing Finance Agency (FHFA) is an independent federal agency; Federal Home Loan Mortgage Corporation (FHLMC) is a private corporation chartered by an act of Congress; MTC Financial, Inc., d/b/a Trustee Corps is a Washington State Domestic for profit corporation; Bishop, Marshall & Weibel, P.S., is a Washington State law firm; and Chuck E. Atkins is the Sheriff of Clark County Washington.

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Pamela S. Owen respectfully submit this petition for a writ of certiorari.

### **OPINIONS BELOW**

The opinion of the Court of Appeals for the Ninth Circuit is unpublished and set forth in Petitioner's Appendix ("Pet.App.") at 1.

The Order of the District Court for the Western District of Washington ("WAWD") granting Respondents MTC Financial, Inc. and Bishop Marshall & Weibel, P.S.'s motions to dismiss and Petitioner leave to amend is unpublished and reproduced in Pet.App. at 4.

The Order of the District Court WAWD granting Respondents FHFA and FHLMC motion to dismiss and Petitioner leave to amend is unpublished and reproduced in Pet.App. at 11.

The Order of the District Court WAWD dismissing Petitioner's complaint as a sanction and ordering the Clerk to terminate Respondents FHFA, FHLMC, MTC Financial, Inc. and Bishop Marshall & Weibel, P.S. is unpublished and reproduced in Pet.App. at 17.

The Order of the District Court granting Respondent Sheriff Atkins' cross motion for summary judgment is unpublished and reproduced in Pet.App. at 19.

### **JURISDICTION**

The Ninth Circuit filed its opinion on August 16, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This Petition involves U.S. Constitution Article III and Amendments Fourth, Fifth and Fourteenth; Rules 1, 15 and 56 of the Federal Rules of Civil Procedure; Washington Constitution Article IV § 6 (Superior Court unlawful detainer original jurisdiction); and Chapters 59.12 and 61.24 Revised Code of Washington.

## **STATEMENT OF THE CASE**

Petitioner acquired her interest in real property on April 28, 2000, as evidenced by Clark County Washington Auditor Document Nos. 3214610, 3214611 and 3214612.

On November 5, 2005, Petitioner executed a Promissory Note in favor of Landmark Mortgage Company, the Lender.

On November 15, 2005, Petitioner granted a Deed of Trust to the Lender, Landmark Mortgage Company, evidenced by Clark County Washington Auditor Document No. 4082317, wherein the Lender caused Mortgage Electronic Registration Systems, Inc., ("MERS") to be named the "beneficiary" of Petitioner's Deed of Trust in contravention of RCW § 61.24.005(2).

On October 17, 2011, MERS, in its capacity as "beneficiary" of the Deed of Trust, assigned Petitioner's Note and Deed of Trust to Bank of America National Association as evidenced by Clark County Washington Auditor Document No. 4799971.

On January 16, 2015, Respondent MTC Financial Inc., in its capacity as Trustee for Bank of America National Association, relied upon the assignment of

the Note and Deed of Trust by MERS to sell Petitioner's only residence to Respondents FHFA and FHLMC, as evidenced by a Trustee's Deed Upon Sale recorded as Clark County Washington Auditor Document No. 5129307, dated January 22, 2015.

On April 2, 2015, Respondents FHFA and FHLMC filed their summons and complaint for unlawful detainer wherein Respondents sought a writ of restitution and an order directing Respondent Sheriff Atkins break and enter Petitioner's home and deliver possession to these Respondents.

On April 3, 2015, less than 24 hours after filing their summons and complaint, Respondents FHFA and FHLMC moved the Superior Court, *ex parte*, for an order of default, judgment for restitution and an immediate Writ of Restitution commanding Respondent Sheriff Atkins break and enter Petitioner's home and deliver possession to these Respondents.

On April 3, 2015, the Superior Court forthwith granted all of the *ex parte* relief requested by Respondents FHFA and FHLMC without requiring service of the summons and complaint and without affording Petitioner notice and an opportunity to be heard.

On May 1, 2015, Petitioner specially appeared and moved the Superior Court to vacate its *ex parte* orders and judgment, which was denied.

On May <sup>7<sup>th</sup></sup> 5, 2015, Petitioner appealed the Superior Court's *ex parte* proceedings and commenced a civil action alleging violation of 42 U.S.C. § 1983 and Washington's Consumer Protection Act (CPA), Chapter 19.86 RCW.

On June 5, 2015, Respondent Sheriff Atkins timely removed Petitioner's civil rights action to the Federal District Court.

On June 15, 2015, Respondent Sheriff Atkins filed his Answer to Petitioner's civil rights complaint, wherein this Respondent asserted, among other things, a defense of "qualified immunity."

On June 18, 2015, Respondent MTC Financial, Inc. filed its Motion to Dismiss.

On August <sup>7 850</sup>~~8~~, 2015, Respondent Bishop, Marshall & Weibel, P.S. filed its Motion to Dismiss.

On October 14, 2015, Respondents FHFA and FHLMC filed their Motion to Dismiss.

On October 6, 2015, the District Court granted Respondents MTC Financial, Inc. and Bishop Marshall & Weibel, P.S.'s motions to dismiss and granted Petitioner leave to amend her Washington Consumer Protection Act ("CPA") claim against these Respondents.

Petitioner did not amend her complaint at this stage of the proceedings because no due date was given; the District Court had yet to rule on the pleadings filed by Respondents FHFA, FHLMC and Sheriff Atkins; and Plaintiff believed all Respondents were in "state action" partnership for purposes of U.S. Const. Amendments Fourth, Fifth and Fourteenth, 42 U.S.C. § 1983 and Rules 1 and 15, Fed. R. Civ. P.

On December 16, 2015, the District Court granted Respondents FHFA and FHLMC motion to dismiss and granted Petitioner leave to amend her State CPA claim against Respondents FHFA and FHLMC.

Petitioner did not amend her complaint at this stage because the District Court had yet to rule on the pleading filed by Respondent Sheriff Atkins back in June 2015 and Plaintiff continued to believe all Respondents were in “state action” partnership for purposes of U.S. Const. Amendments Fourth, Fifth and Fourteenth, 42 U.S.C. § 1983 and Rules 1 and 15, Fed. R. Civ. P.

On ~~January 31, 2016~~ <sup>February 9, 2016 p30</sup>, the District Court dismissed as a sanction Petitioner’s State CPA claim and ordered the Clerk to terminate Respondents FHFA, FHLMC, MTC Financial, Inc. and Bishop Marshall & Weibel, P.S.

On February 15, 2016, Petitioner filed a motion for summary judgment against Respondent Sheriff Atkins as part of an effort by Petitioner to cause the District Court to take action on Respondent Sheriff Atkins’ pleadings.

On February 25, 2016, Respondent Sheriff Atkins filed a cross motion for summary judgment but failed to pursue his claim that he was entitled to “qualified immunity.”

On April 13, 2016, the District Court granted Respondent Sheriff Atkins’ cross motion for summary judgment.

Petitioner timely appealed the District Court’s orders and judgments on May 12, 2016.

On August 16, 2017, a three-judge panel of the Ninth Circuit affirmed all of the District Court's orders and judgments, and ruled, among other things, that:

"The district court properly dismissed Owen's § 1983 claims against Federal Home Loan Mortgage Corporation and MTC Financial, Inc. because Owen failed to allege facts sufficient to show that these defendants acted under color of state law.... We reject as meritless Owen's contention that the district court was required to determine whether qualified immunity applied."

### REASONS FOR GRANTING THE PETITION

The procedures and decisions of the State and Federal Courts below (1) unequivocally denied constitutional due process of the laws; (2) countenanced the theft of real property through the fraudulent conveyances used to pass real property; and (3) ratified an obvious and gross misuse of power under color of the State's laws without any semblance of Federal constitutional justification.

The State of Washington and Respondent Sheriff Atkins did not have lawful constitutional or statutory authority to break and enter Petitioner's home and remove its occupants because: (1) Respondent MTC Financial Inc. did not possess lawful authority to sell Petitioner's home to Respondents FHFA and FHLMC; and (2) Respondents FHFA and FHLMC, in concert with the Superior Court, did not have lawful authority to engage in *ex parte* unlawful detainer proceedings without affording Petitioner notice and an opportunity to appear and defend.

Judicial unlawful detainer proceedings bear the clear and unmistakable *imprimatur* of the State and are indices of "state action" flowing from a legislature-sanctioned partnership between private individuals and the State of Washington and its State officials, to wit: (1) Real property is conveyed by the private Trustee's

Deed Upon Sale authorized in Chapter 61.24 RCW; and (2) Using Article IV, § 6 of the State of Washington Constitution and Chapter 59.12 RCW, the State's County Superior Court summarily confirms the private nonjudicial foreclosure proceedings and the County Sheriff, in company with the private purchaser or her or his agent, forcibly seizes the real property from the occupant in possession and delivers possession to the private party so named in the private Trustee's Deed Upon Sale.

The State's nonjudicial foreclosure statute, Chapter 61.24 RCW, is also a statute that has been enacted in derogation of the common law. Being in derogation of the common law, it is a special power conferred by statute, and the rule is that such statutes must be strictly construed. *Brown v. Barry*, 3 U.S. (3 Dall.) 365, 367 (1797). The State and Federal Courts below, as applied to Petitioner and others, have given Chapter 61.24 RCW an expansive, rather than a restrictive construction as required by this Court's rule.

The State Legislature did not mandate in Chapter 61.24 RCW that Respondents FHFA and FHLMC invoke "state action" under Chapter 59.12 RCW before selling Petitioner's home to another buyer.

Nor did the State Legislature mandate in Chapter 59.12 RCW that its courts, judges and sheriffs utilize the power of the State where Respondents FHFA and FHLMC are not seeking to physically occupy Petitioner's home.

Further, the decisions of the Federal District Court and the Court of Appeals mistakes and misstates the history and laws of Our Great Nation. In real property transactions and transfers in the United States and the State of Washington, the

deed of conveyance is the “principal” and the “thing” that transfers all its incidents, including the right of possession and any easements, unless expressly exempted.

Thus, Legislative and Judicial philosophies have long held that the incident follows the principal and not the principal the incident and that the incident can never transfer the thing itself. In the early case of *Van Rensselaer v. Kearney*, 52 U.S. (11 How.) 297, 322 (1850), this Court held:

“The general principle is admitted that a grantor, conveying by deed of bargain and sale, by way of release or quitclaim of all his right and title to a tract of land, if made in good faith and without any fraudulent representations, is not responsible for the goodness of the title beyond the covenants in his deed. (Citations omitted.) A deed of this character purports to convey, and is understood to convey, nothing more than the interest or estate of which the grantor is seized or possessed at the time, and does not operate to pass or bind an interest not then in existence.” See also: *Van Slyke v. Arrowhead Reservoir & Power Co.*, 155 Cal. 675, 681-682, 102 P. 816 (1909); *New York Indians v. U.S.*, 170 U.S. 1, 25-26 (1898); and *Midland Realty Co. v. Halverson*, 101 Mont. 49, 54, 52 P.2d 159, 161 (1935).

Chapter 61.24 Revised Code of Washington (RCW), with stated exceptions, authorizes foreclosures without judicial supervision and active involvement of the State. Subdivision (1) of RCW § 61.24.050 parallels this Court’s holding in *Van Rensselaer v. Kearney*, *supra*, and provides that:

“Upon physical delivery of the trustee’s deed to the purchaser, or a different grantee as designated by the purchaser following the trustee’s sale, the trustee’s deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee’s sale which the grantor had or had the power to convey at the time of the execution of the deed of trust, and such as the grantor may have thereafter acquired.”

Subdivision (7) of RCW § 61.24.040 provides in relevant part that:

“[T]he [trustee’s] deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value...”

Yet, the Federal District Court and the Court of Appeals have held otherwise by ruling that not only is it permissible for the incident, the Deed of Trust, to transfer the principal, the Note, but it is also permissible for any court, State or Federal, to engage in ad hoc lawmaking to create the existence of jurisdiction, not then in existence, necessary to issue *ex parte* orders and judgments without providing to the affected individual notice and an opportunity for a hearing.

As applied to this Petition and the facts below, and notwithstanding the existence of direct State judicial *imprimatur* supporting Petitioner’s “state action” claims, the Federal District Court and the Court of Appeals have decidedly held that “state action” does not necessarily mean what this Court has said “state action” means in *Shelley v. Kraemer*, 334 U.S. 1, 13-14 (1948); *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 338-39 (1969); *Fuentes v. Shevin*, 407 U.S. 67, 70-71 (1972); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975); *Lugar v. Edmondson Oil Company*, 457 U.S. 922 (1980); and *Edmondson v. Leesville Concrete Company*, 500 U.S. 614 (1991).

This outcome raises serious “justice” and constitutional issues because the actions of the State were derivative of Respondent MTC Financial, Inc. selling Petitioner’s real property without lawful authority and its deliverance of the Trustee’s Deed Upon Sale to FHFA and FHLMC, who in turn, in conspiracy and or

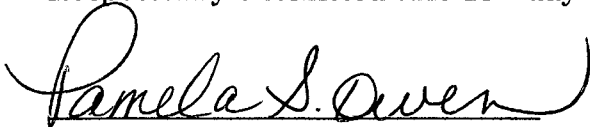
agreement with Respondent Bishop, Marshall & Weibel, P.S., used the deed and previously unknown ad hoc *ex parte* court power and proceedings to demand the State (1) exercise jurisdiction and (2) command Respondent Sheriff Atkins to “break and enter” Petitioner’s home; remove all occupants; and “deliver possession” of Petitioner’s home to FHFA and FHLMC.

Only by operation of two State laws, Chapters 59.12 and 61.24 RCW, did Respondents and the State of Washington fall into an undeniable public-private partnership that created privity, *Stacy v. Thrasher*, 47 U.S. 6 How. 44, 60 (1848), and brought them within the rule of *Shelley v. Kraemer*, 334 U.S. 1, 13-14 (1948); *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 338-39 (1969); *Fuentes v. Shevin*, 407 U.S. 67, 70-71 (1972); *North Georgia Finishing, Incorporated v. Di-Chem, Inc.*, 419 U.S. 601 (1975); *Lugar v. Edmondson Oil Company*, 467 U.S. 922, 934, 940-42 (1980); and *Edmondson v. Leesville Concrete Company*, 500 U.S. 614 (1991), which hold that a private party becomes a state actor if he or she uses a state procedure requiring state intervention, ratification or enforcement of the private conduct.

### CONCLUSION

Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted this 13<sup>th</sup> day of November 2017.



PAMELA S. OWEN  
3912 NE 57<sup>th</sup> Avenue  
Vancouver, WA 98661  
(360) 991-4758  
[pamela.owen99@gmail.com](mailto:pamela.owen99@gmail.com)  
*Petitioner*