

Case No. 17-8290

IN THE UNITED STATES SUPREME COURT

ANTHONY WRIGHT, AN INDIVIDUAL,
AND TRUSTEE OF THE TRUST
ESTATE OF LORECE WRIGHT,

Join Petitioners,

vs.

Defendants

1. Bayview Loan Service LLC.

From here out will be known as (Bayview).

2. Les Wilsons, Michelle Wilson, LDW, MRA,
Quickfix, Wilson Family Trust, and does 1-10.
From here out will be known as (the Wilsons).

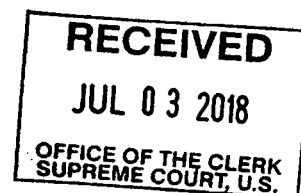
Respondents.

ON DUAL PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

WRIT OF CERTIORARI

PETITION FOR REHEARING

PETITIONERS
ANTHONY WRIGHT
an Individual and Trustee
ESTATE OF LORECE WRIGHT
106 1/2 Judge John Aiso St. # 209
Los Angeles, California 90012
(424) 331-2402



1 PETITION FOR REHEARING

2
3 On May 29, 2018, the U.S. Supreme Court denied certiorari in Bayview
4 Loan Servicing, LLC, et al. versus Wright.

5 In (Case No. 17-8290) to address the requirement, established in
6 Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S.
7 172, 194-96 (1985), that landowners must first unsuccessfully seek compensation
8 in state court before bringing a Fifth Amendment taking claim in Federal Court.
9 No other category of plaintiffs desiring to vindicate their constitutional rights
10 under 42 U.S.C. § 1983 is subject to this onerous requirement.

11 This is a good faith PETITION FOR REHEARING certify that it is
12 “presented in good faith and not for delay.”³⁷. Each ground is limited to new
13 intervene circumstance and other grounds not presented.

14 Since the Court’s original denial or on facts that have not already been
15 presented to the Court.⁴² See ruled 44. one and two.
16

17 I. PRECEDENT GRANTING REHEARING

18
19 In (Case No. 17-8290) to address the requirement, established in
20 bankruptcy’s abandoned estate where the estate also received relief from stay
21 that properties owners must first unsuccessfully seek compensation in state court
22 before bringing a Fifth Amendment taking claim in federal court. No other
23 category of plaintiffs desiring to vindicate their constitutional rights under 42
24 U.S.C. § 1983 is subject to this onerous requirement. The rule puts landowners in
25 the following “ripeness Catch-22”: “try vindicating a property owner’s federal
26 constitutional right in federal court in the first instance, and the federal court
27 will tell you that you can’t reopen a bankruptcy claim in bankruptcy court and
28 need to litigate your disputes in state court after a bankruptcy property has been

1 abandoned or/and received relief from stay.

2 The case arose out of a stipulation which related to the abandoned estate
3 without all properties owners. The Bankruptcy Court granted relief from stay
4 and every bankruptcy court will deny any claim which has been abandoned and
5 received relief from stay and instructs parties to litigate their issue in state court.

6 “Whether the Court should reconsider the portion of in Bayview Loan
7 Servicing, LLC, et al. versus Wright. requiring property owners to exhaust state
8 court remedies to ripen federal takings claims, as suggested by Justices of this
9 Court? See Arrigoni Enterprises, LLC v. Town of Durham, 136 S. Ct. 1409 (2016)
10 (Thomas, J., joined by Kennedy, J., dissenting from denial of certiorari); San
11 Remo Hotel, L.P. v. City and County of San Francisco, 545 U.S. 323, 348 (2005)
12 (Rehnquist, C.J., joined by O’Connor, Kennedy, and Thomas, JJ., concurring in
13 judgment).”

14 The bankruptcy court state court requirement has been widely criticized
15 for years, including by various of the Court’s own members, and the criticism
16 over its harsh rule is plainly warranted. In addition, given that the nation’s
17 courts are in great jurisdiction conflict over whether the rule applies to proper
18 subject matter jurisdiction and it is time for the Court to definitively settle the
19 issue. Bayview has modified their loans and their stipulations is a pure
20 modification and is governed by all statutes related to loan modification.

21 Jurisdiction as personal was raised for the first time in this court and
22 applies to the rehearing of these issues. Louisville & Nashville R. Co. v Mottley,
23 211 U.S. 149, 152 (1908).

24 The Ninth Circuit found a settlement by an attorney during another
25 bankruptcy proceeding is indistinguishable from the 10th and 14th Amendment
26 contract clause and state law property right questions over ownership of the deed
27 of trust with multiple owners and all owners were, not before the bankruptcy
28 court as listed in the Los Angeles California County Recorder’s Office by the

1 indexing requirement a public record. *See e.g., Coolidge v. Long*, 282 U.S. 582,
2 594-95, 600-03, 605 (1931); *United States v. Security Industrial Bank*, 459 U.S.
3 70 (1982). Generally, *see, Matthew v. Diaz*, 426 U.S. 67, 76-77 no. 10-11 (1976);
4 *E.g., West v. AT&T*, 311 U.S. 223, 236 (1940); also *see, In Nowlin*, 508 B.R. 907
5 (C.D. Cal. 2016) (Nowlin).

6 7 JURISDICTION

8
9 In the absence of a controlling Bankruptcy Code definition, it must be
10 presumed that Congress left the determination of property “rights” in estate
11 assets to state law. *Butner v. United States*, 440 U.S. 48, 54–55, 99 S.Ct. 914,
12 918, 59 L.Ed.2d 136. The mortgagee's “rights,” therefore, are reflected in the
13 relevant mortgage instruments, which are enforceable under Texas law. Those
14 rights include, among others, the right to repayment of the principal in monthly
15 instalments over a fixed term at specified adjustable interest rates, and they are
16 protected from modification by § 1322(b)(2). *Nobleman v. Am. Sav. Bank*, 508 U.S.
17 324, 324, 113 S. Ct. 2106, 2108, 124 L. Ed. 2d 228 (1993).

18 Unlike the other federal courts, such as the district courts, bankruptcy
19 courts are legislatively created. This means that the courts were established by
20 Congress under its legislative authority to create courts under Article I, Section 8
21 of the Constitution. Under the federal statute 28 U.S.C. 1334, bankruptcy courts
22 have exclusive jurisdiction over bankruptcy cases. This means that a bankruptcy
23 case cannot be filed in state court. The reason behind this law is that a uniform
24 bankruptcy system requires cases to be filed in a uniform federal system, instead
25 of in different state courts, which may have different rules and regulations.

26 In this case, the properties have been abandoned by court order by the
27 bankruptcy court and received relief from the automatic stay.

28 The property owners needed all owners with property interest to make a

1 deal or/and enter into a modification with the bank or note holder.

2 If the bank or note holder agrees to a modification than it shall be
3 governed by the statues of state law. Any breach during the loan modification
4 period the court hold the note holder accountable for breaches of this duty. See:
5 Jolley v. Chase Home Finance LLC, 213 Cal. App. 4th 872 (2013) if a note holder
6 sells, transfer, loan during the modification process without the knowledge or/
7 and permission of the property owner than the assignment is void. A California
8 appellate court case that a void assignment is void for all purposes and a
9 borrower may assert another state's trust law. See Glaski v. Bank of America,
10 218 Cal. App. 4th 1079 (Cal App. 5th Dist. 2013).

11 No court has jurisdiction to approve an stipulation without necessary and
12 essential owners related to the property.

13 A note owner has the right to modify the note but shall not violate state
14 law related to the stipulation or/ and loan modification.

15 For example, it is a violation of state law to sell a property without all
16 owners on a deed.

17 Note Bayview's stipulation is a pure loan modification with was started
18 without all owners. The loan modification is still pending and needs to be
19 amended to include all owners.

20 The bankruptcy court granted relief from stay on 9-9-2008 when it was
21 discovered that all parties was not included on the stipulation. In order for the
22 bankruptcy court to have jurisdiction all parties are needed.

23 The stipulation has title issue from day one and the bank / note holder
24 foreclosure is void for violation of state law statues related to property's owner
25 ownership.

26 II. COLLATERAL ATTACKS

27 In resolving a grant deed, the taking of the property was sufficient to perfect
28 title. United States v. Fullard-Leo, 331 U.S. 256 (1947): Travelers Indem. Co. v.

1 Bailey, 557 U.S. 137 (2009) (Bailey) [the prior appeal was final and those matters
2 could not be heard]; *Ryder v. United States*, 515 U.S. 177 (1995) [The matter on
3 appeal was not heard because it was not raised in this court](Ryder)[The matter
4 previously raised on appeal was not the same matter raised in the lower court for
5 the first time]; *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995); also see, *Connor v.*
6 *Williams*, 404 U.S. 549, 550-51 (1972) (Connor). E.g., *Mosser v. Darrow*, 341 U.S.
7 267 (1951) [if more persuasive precedent exist this Court will cite and relied upon
8 the most persuasive precedent].

9 The closets case was Connor where the law was struck down and any law
10 contrary to any federal law that includes the constitution is actually no law at all
11 so, if jurisdiction was implicated it was dictum. *Montgomery v. Louisiana*, 136
12 S.Ct. 718 (2016) (Louisiana). When dictum controls the disposition applies until a
13 better case is before this Court. *Crawford Fitting Co. v. JT Gibbons, Inc.*, 482
14 U.S. 437 (1987); also see, *Southern Union Co. v. United States*, 567 U.S. 343
15 (2012); *United States v. Montero-Camargo*, 208 F.3d 1122 (2000) (en banc).

16 Moreover, Bailey held some USSC jurisprudence must have precluded the
17 relief and if, no USSC jurisprudence authorized jurisdiction to stipulate the lower
18 courts resolved an issue this USSC must now decide. Therefore, Bailey prohibited
19 departures from USSC jurisprudence. See *Bernards v. Johnson*, 314 U.S. 19, 29,
20 32 (1941) (Bernards).

21 22 III. LAWS ENACTING BANKRUPTCY JURISDICTION

23 Some constitutional provision that maybe Article I, § Section 1, Article I,
24 Section § 8, Article I,Section § 8, Clause 18, or each must authorize the
25 bankruptcy statutes, rules, or each. *Continental Illinois Nat'l Bank & Trust v.*
26 *Chicago Rock Island & Pac. Ry. Co.*, 294 U.S. 648, 669-70, 676 (1935)
27 (Continental Illinois); also see, *United States v. Richardson*, 754 F.3d 1143, 1144-
28 45 (9th Cir. 2014). See Appendix (Appx.) "1" page -, Appx. "2" page -, and Appx.

1 “3” page -. The lower courts did not cite any law as opposed to a decision finding
2 in bankruptcy proceedings stipulations are permissible.

3 In Hibbs-- it was found the statute governing the issue was interpreted as
4 authorizing the relief; however, it was a non-jurisdictional act as court rules do
5 not create jurisdiction. See Hibbs v. Winn, 542 U.S. 88 (2004)

7 III. A. JURISDICTIONAL INVALIDITY OF THE BELOW DECISIONS

8 Bankruptcy decisions must be governed by some bankruptcy statute,
9 bankruptcy rule, or both. Czyzewski v. Jevic Holding Corp., 137 S.Ct. 973, 985-87
10 (2017); Midlantic Nat. Bank v. New Jersey Dept. of Environment Protection 474
11 U.S. 494 (1986) (Midlantic Nat. Bank); also see, SEC v. United States Realty &
12 Improvement Co., 310 U.S. 434, 455 (1940). Absence some bankruptcy statute,
13 bankruptcy rule, or both no relief maybe found as appropriate or available.

14 The Ninth Circuit decision found that estate property maybe exempt was
15 originally within the jurisdiction of the bankruptcy court is distinguishable from
16 the abandonment of estate assets on the basis “no” appeal was taken and parties
17 may not stipulation to jurisdiction. Bernards v. Johnson, 314 U.S. 19, 29, 32
18 (1941); also see, Rosecrans v. United States, 165 U.S. 257, 262 (1897) [amended
19 statute does not remove previous jurisdictional implications]. See Appx. “4” page
20 as 11 U.S.C. § 554.

21 The phrase “non-bankruptcy assets” should govern abandoned assets by a
22 chapter trustee. Barton v. Barbour, 104 U.S. 126, 127, 134, 137 (1881).
23 In any event an analysis why jurisdiction was exercised in Midlantic Nat. Bank
24 was on the timely. Appealed basis and how a party may waive the right to appeal
25 a bankruptcy abandonment order allowing review of an appealable order that
26 was not taken up on appeal is the question before the court. Therefore, every law
27 in conflict with the constitution and federal law is actually no law at all. See
28 Louisiana.

III. B. JURISDICTION AS STANDING AND PROPERTY INTEREST

Stern held voluntary consent is not subject matter jurisdiction and Bellingham held voluntary consent must be waived or voluntary consent must be given. Compare, *Wellness International. Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015). Stern and Bellingham did not find standing maybe raised at any time as *Newdow* allowed. *Elk Grove Unified Sch. Dist v. Newdow*, 542 U.S. 1, 4-5, 11-12 (2004) (*Newdow*).

The bankruptcy court approval of the Trustee's abandonment estate asset or / and the deed of trust did not have all the essential and necessary properties owners, before the court. The issue seems to be an alleged property interest right that triggers the standing questions is exceptional in bankruptcy jurisprudence and maybe raised at any time even for the first time on rehearing. *United States v. Security Industrial Bank*, 459 U.S. 70 (1982); also see, *Landgraf v. USI Film Products*, 511 U.S. 244, 271 no. 25, 278 no. 32 (1994); Compare, *United States v. McGuire*, 550 F.3d 903, 908, 914 (9th Cir. 2008) [adjunct appellate court reversed to secure voluntary consent in the prior appeal]. At issue is whether deed of trust embodies property interest rights; while, *Coder* held voluntary consent was necessary and Stern held some property interest right must be alleged. *Coder v. Art*, 213 U.S. 223, 232 (1909).

It is Bellingham that noted absence voluntary consent appeal ability was absence and therefore, when the property interest questions become plausible the lower courts lacked jurisdiction. Compare, *Sharif*, *supra*.

IV. STIPULATIONS

III. A. STIPULATIONS TO SECURE JURISDICTION IS PROHIBITED

Parties may not stipulate to jurisdiction however; the 9th circuit court disagrees with USSC jurisprudence. *Grubbs v. General Electric Credit Corp.*, 405 U.S. 699 (1972). Jurisdiction is determined by the judiciary, not by stipulation of the parties.

1 III. B. STIPULATION ON JURISDICTIONAL FACTS ALLOWED

2 The parties may stipulate to jurisdictional facts provided that all properties
3 parties consent. *West Peninsular Title Co. v. Palm Beach County*, 41 F.3d 1490
4 (11th Cir. 1995): Also See, *Matthew v. Diaz*, 426 U.S. 67, 76-77 no. 10-11 (1976)
5 [The stipulation was denied.]

6 IV. VOLUNTARY CONSENT

7 All parties must give written voluntary consent and the lower courts
8 cannot strong arm the omitted parties into bankruptcy proceedings through
9 allowing the Fullard-Leo relinquishment of title. *C. F Sharif, supra*. This is why
10 all properties owner are necessary.

11 V. JOINER OF ALL PARTIES

12 Although parties making any kind of appearance except to challenge jurisdiction
13 have capitulated to jurisdiction but when voluntary consent by all parties does
14 not appear of record the decision is reversible on other grounds. See e.g.,
15 *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 235 (1917) (*Mitchell*). C.f.
16 *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, , 109-11,
17 120-28 no. 16, no. 18-21 (1968); also see, *Paiute-Shoshone Indians v. City of Los*
18 *Angeles*, 637 F.3d 993 (9th Cir. 2011); Compare, *Zenith Radio Corp. v. Hazeltine*
19 *Research, Inc.*, 390 U.S. 100, 108-110, *affd*, *Martin v. Wilks*, 490 U.S. 755, 761
20 (1989); also see, *Webster v. Fall*, 266 U.S. 507, 510-11 (1925) [some matter simply
21 lurk in the record]; Compare, *Steel Co. v. Citizens for Better Environment* 523
22 U.S. 83, 99 (1998) [absence of all parties must be raised].

23 VI. CONCLUSION

24 The Wilson's have objected to the bankruptcy jurisdiction and the
25 bankruptcy court would not allow Anthony Wright to reopen abandoned estates
26 which has received relief from stay in bankruptcy. Anthony request the Supreme
27 Court to reverse the Summary Judgment so Relief can be litigated in State
28 Court.

1 New federal rules prohibit dual tracking. Mortgage lenders are now
2 prohibited by federal law from conducting a foreclosure while a mortgage
3 modification application is under consideration.

4 The borrower argued that bank “dual tracked,” that is, initiated a
5 foreclosure while reviewing the borrower’s loan modification, in violation of the
6 California’s Unfair Competition Law (UCL). The UCL, codified in California’s
7 Business & Professions Code § 17200, et. seq., provides in pertinent part that the
8 court has the power to make judgments that may be necessary to prevent use of
9 “any practice which constitutes unfair competition ... necessary to restore to any
10 person in interest any money or property, real or personal, which may have been
11 acquired by means of unfair competition.” Essentially, the borrower argued that,
12 had his modification been approved, he could have resumed payments on the loan
13 and reclaimed his property, and the bank deprived him of that opportunity when
14 it preemptively foreclosed on his home.

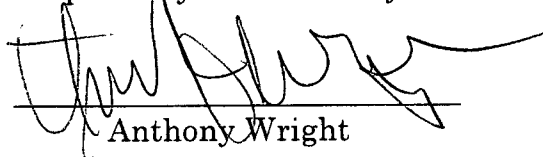
15 The lower court dismissed the borrower’s cause of action against the bank
16 for alleged violation of the UCL.

17 **The Appellate Decision.** The Court of Appeal reversed, holding that the
18 borrower had stated a claim because “dual tracking” of loan modification
19 application and foreclosure would violate California’s UCL and support a claim of
20 wrongful foreclosure. California’s UCL seeks to protect consumers against any
21 unlawful, unfair or fraudulent practices. According to prior precedent, a business
22 practice is “unfair” for purposes of the UCL, when it “offends an established
23 public policy.” The public policy that the plaintiff based his case on must be
24 “tethered to specific constitutional, statutory or regulatory provisions.”
25 The court turned to the applicable statutory provision in this case, namely, the
26 mortgage rules under California Civil Code Section 2923.6, and its 2012
27 amendments. The legislature amended Section 2923.6(c) so that, after the
28 borrower submits a loan modification application, the lenders may not conduct a

1 trustee's sale until "[t]he mortgage servicer makes a written determination that
2 the borrower is not eligible for a first lien loan modification." While the court
3 recognized that the 2012 amendments did not apply to the loan at issue as the
4 loan predated the amendments, it said the amendments showed that dual
5 tracking violated public policy even at the time that this loan was originated.
6 In its decision, the court relied largely on two prior precedents: Jolley v. Chase
7 Home Finance, LLC, 213 Cal.App.4th 872 (2013) and Lueras v. BAC Home Loans
8 Servicing, LP, 221 Cal.App.4th 49 (2013). In Jolley, the court held that the 2012
9 amendments illustrated that dual tracking was "unfair" for purposes of the UCL.
10 In Lueras, the court found that foreclosing on a property within 30 days after
11 sending a written denial of modification violated the Making Home Affordable
12 Guidelines and, therefore, also was an "unfair practice" under the UCL. This case
13 underscores that lenders and loan servicers should be mindful of the possible
14 relationship, under state law, between the lender's ability to foreclose and the
15 status of any pending application by the borrower for a loan modification.
16 Although this particular case was based on California law, some states have
17 similar statutory schemes that likewise may have implications for the practice of
18 "dual tracking."

19
20 Dated: June 25, 2018

Respectfully Submitted by:

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22 
23 Anthony Wright
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**Additional material
from this filing is
available in the
Clerk's Office.**