

1 Case No. 18-7508

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3
4 In the
5 Supreme Court of the United States
6

7 PATRICK BROOKS,

8 Petitioner
9 v.

10 PINNACLE FINANCIAL CORPORATION; MORTGAGE ELECTRONIC
11 REGISTRATION SYSTEMS, INC.; GMAC MORTGAGE, LLC; EXECUTIVE
12 TRUSTEE SERVICES, LLC; EXECUTIVE TRUSTEE SERVICES LLC DBA ETS
13 SERVICES LLC, ETS SERVICES LLC, CINDY SANDOVAL; BANK OF NEW
14 YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION;
RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC., SERIES 2006-RS1
TRUST; DCB UNITED LLC; VAROUGAN KARAPETIAN AND VINCENT
KARAPETIAN; NANETTE KARAPETIAN; AND DOES 1-12, INCLUSIVE.

15 Respondents
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17 _____
18 On Petition for Writ of Certiorari to the United States Court of Appeals for the
Ninth Circuit

19 BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
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21 Submitted by

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TABLE OF CONTENTS

1

2 A. TABLE OF AUTHORITIES3

3 1. QUESTION PRESENTED FOR REVIEW IS MISTATED4

4 2. DESCRIPTION OF THE OPINIONS BELOW. BROOKS CLAIMS ARE

5 BARRED DUE TO THE RES JUDICATA, COLLATERAL, CLAIM

6 PRECLUSION, JUDICIAL ESTOPPEL AND BAR OF THE STATUTES OF

7 LIMITATIONS.....5

8 3. RESPONDENT'S CORRECTIONS TO THE STATEMENT OF FACTS ADDS

9 OMMITTED FACTS7

10 4. LIST AND IDENTIFICATION OF PARTIES.....10

11 5. REASONS FOR DENYING THE PETITION12

12 6. BROOKS LETTER TO THE SUPREME COURT (DATED 9/26/2018) SHOULD

13 BE DISREGARDED. TO THE EXTENT THAT THE LETTER IS PART OF THE

14 SUPREME COURT'S RECORD, RESPONDENT CONTENDS THAT THE

15 REFERENCE CONCERNING THE RULINGS OF THE ARIZONA SUPERIOR

16 COURT IS A SHAM. BROOKS SUED PINNACLE FINANCIAL, A DEFUNCT

17 CORPORATION WITHOUT NOTICE TO THE OTHER PARTIES IN

18 INTEREST, NOTABLY THE PRESENT OWNERS, NANETTE KARAPETIAN

19 RESPONDENT HEREIN.....13

20 7. CONCLUSION: BROOKS' PETITION SHOULD BE DENIED AS

21 FRIVOLOUS13

22 B. SUPPLEMENT TO APPENDIX SUBMITTED BY DEFENDANT

23 KARAPETIAN15

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TABLE OF AUTHORITIES

CASES

GMAC Mortg., LLC v. McKeever, 651 Fed. Appx. 332, 343-44 (6th Cir. 2016)4
Hay v. First Interstate Bank of Kalispell N.A. 978 F.2d 555,557 (9th Cir. 1992)9
Jesinoski v. Countrywide Home Loans 135 St. Ct. 790 (2015)5
Jesinoski v. Countrywide Home Loans, Inc. 135 S. Ct. 790 (2015).....4
Jesinoski, supra7
Payless Wholesale Distribs. Inc. v Alberto Culver (PR) Inc. 989 F.2d 570,571 (1st
Cir. 1993)9

STATUTES

California Civil Code §2924(c).....5
California Civil Code Section 2924(c)8, 12

OTHER AUTHORITIES

Truth in Lending Law (TILA)5

RULES

Rule 32.....9
Supreme Court Rule 15.24

1 Respondents VAROUGAN KARAPETIAN, VINCENT KARAPETIAN,
2 NANETTE KARAPETIAN oppose the granting of the Petition for Writ of
3 Certiorari filed by Appellant PATRICK BROOKS.
4

5 **1. QUESTION PRESENTED FOR REVIEW IS MISSTATED.**

6 Pursuant to *Supreme Court Rule 15.2*, the Respondent points out that the
7 Petition makes serious misstatements.

8 Petitioner claims the question presented for review is an interpretation of
9 the holding in *Jesinoski v. Countrywide Home Loans, Inc.* 135 S. Ct. 790 (2015). He
10 claims that the 2015 decision allows him to go back and undo several past decisions
11 against him that have gone to final judgment. What he is missing in his “question
12 presented for review” is whether regardless of the law, is Petitioner allowed to set
13 aside the decisions against him in state court and federal court years ago, at which
14 he could or did raise the same issues, which were decided against him, and which
15 judgments have long since become final, and whether a foreclosure sale in 2012 to a
16 bonafide third party purchaser that was deemed final, should now be undone.
17 BROOKS sidesteps the effect of the finality of those other judgments. *GMAC*
18 *Mortg., LLC v. McKeever*, 651 Fed. Appx. 332, 343-44 (6th Cir. 2016).
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21 He also fails to present the question whether his 2009 bankruptcy in which
22 he received a discharge, but never mentioned the existence of his claims, purporting
23 to exist since 2007, in his schedules, judicially estop him from proceeding years
24 later in this action.
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1 February 25, 2011, prior to the 2012 foreclosure sale, and before the
2 KARAPETIANS had an interest in the property. The Superior Court case
3 EC055033 was removed by the bank defendants to federal court and became
4 USDC case no. CV11-3135 GAF (SSx) on April 12, 2011. The case was dismissed
5 on May 12, 2011. He was permitted by the District Court to file an amended
6 complaint and failed to do so, and the dismissal became final. The foregoing is
7 discussed in the record at Appendix A, page 7.
8

9 Then, BROOKS filed a second, post-foreclosure, state court action Los
10 Angeles Superior Court BC500541 on February 5, 2013, this time naming the
11 KARAPETIANS who were the now the owners. He lost again, by having a
12 demurrer sustained without leave to amend on December 2, 2013, which operated
13 as a judgment. He appealed to California Court of Appeal and judgment was
14 affirmed on September 25, 2015. This judgment was then final. This is supported
15 in the record at Appendix A, page 7, 8. BROOKS did not further obtain any
16 appellate decision reversing this judgment.
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19 Third, BROOKS was the defendant in a post foreclosure unlawful detainer
20 Los Angeles Superior Court Case No. 13U00440, filed on 3/4/2013: LASC Case No.
21 13U00440. BROOKS. He appealed that to the Appellate Division of the Los
22 Angeles Superior Court as Los Angeles Superior Court Appellate Division No.
23 BV030606 and lost on October 21, 2014. A necessary judicial finding had to be
24 made by the trial court that title had been duly perfected in the purchaser at the
25 foreclosure sale, in order to render judgment for the plaintiffs. On appeal, the
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1 Appellate Division of the Superior Court affirmed the unlawful detainer judgment.
2 BROOKS did not further appeal this ruling. (Appendix A, page 8)

3 By the time he filed the District Court action that is at the heart of this
4 appeal Case No. LA-CV-16-07711-JAK on 10/17/2016, there was a history of
5 decisions that were res judicata, affirming the validity of the sale. In addition, his
6 claims in the USDC action were grounded in fraud or breach of contract, and arose
7 from activity that occurred in 2007 on which the statute of limitations had long
8 since run. As discussed in Appendix A, pp. 14-15, this complaint was filed more
9 than seven years after BROOKS purportedly rescinded. Whether claiming fraud,
10 which has a 3 year statute of limitations, or California Business and Professions
11 Code (4 years), or FCRA (2 years) or RICO (4 years), all conceivable statutes of
12 limitation were long since expired. (See Appendix A, Record pp. 14-15). The
13 District Court concluded that BROOKS was also barred by the doctrine of “claim
14 preclusion” because he had not raised issues in his prior actions when he could
15 have raised them.
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19 In Appendix A, the District Court also ruled that BROOKS did not have
20 standing to allege defects in the assignment and transfer of the deed of trust and
21 was barred by the tender rule. However, regardless of the holding in *Jesinoski*,
22 *supra*, BROOKS was already barred by res judicata, claim preclusion, statutory
23 presumption of the validity of the foreclosure sale, and the statutes of limitation.
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25 **3. RESPONDENT’S CORRECTIONS TO THE STATEMENT OF**
26 **FACTS ADDS OMITTED FACTS.**
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1 BROOKS failed to discuss any of the reasons that his claim was declared
2 frivolous, and further omitted any reference to his bankruptcy discharge, which is
3 fatal to his claim for relief.

4 1. The judgment of the Ninth Circuit Court of Appeals was entered on March
5 22, 2018. (Appendix F, p. 69) dismissing the appeal from the United States
6 District Court Case, Central District California No. CV16-07711-JAK-AJWx
7 (Appendix A, p.1), as being frivolous.

8 2. The issues raised in the aforementioned federal action were

9 (a) Barred by res judicata and collateral estoppel after having been
10 adjudicated to a final disposition in the California state courts on three occasions.

11 (b) BROOKS was barred by claim preclusion by not having litigated his
12 claims in the earlier actions.

13 (c) Under California law, even a foreclosure that might be defective is
14 conclusively presumed valid if no action is taken to stop it, and the foreclosure
15 trustee's deed contains the recitals that it was properly conducted and sold to a
16 bonafide purchaser. *California Civil Code Section 2924(c)*.

17 (c) BROOKS' filing of the District Court action on October 26, 2017 was well
18 beyond any applicable Statute of Limitations.

19 (d) BROOKS filed bankruptcy in 2009, failing to make any reference to his
20 alleged claims herein which had supposedly arisen in 2007, and received a
21 Chapter 7 discharge, thereby barring his claims under the doctrine of judicial
22 estoppel. BROOKS had filed six different bankruptcies, but never listed his claim
23 as an asset, particularly in the one bankruptcy that proceeded all the way to
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1 discharge (Bankruptcy Court Central District of California Case No: 2-09-bk-
2 36236VZ filed on 9/29/2009 as a Chapter 13, converted to Chapter 7 and discharge
3 ranted in August 2010.). Pursuant to federal cases, including *Payless Wholesale*
4 *Distribs. Inc. v Alberto Culver (PR) Inc.* 989 F.2d 570,571 (1st Cir. 1993) and *Hay v.*
5 *First Interstate Bank of Kalispell N.A.* 978 F.2d 555,557 (9th Cir. 1992), if a
6 plaintiff-debtor omits a pending or to-be-filed lawsuit from his bankruptcy
7 schedules and obtains a discharge, judicial estoppel bars the action. (Discussed at
8 Appendix A, page 8).

9
10 In compliance with *Rule 32*, Request for Judicial Notice is made of certain
11 filings in the Central District of California Bankruptcy Court (namely, Petitioner's
12 bankruptcy schedules and discharge order in Case No. 2:09-bk-36236-VZ) that
13 were not included as part of the record in the United States District Court
14 underlying case, United States District Court Case No. 16-cv-07711 JAK. In the
15 record of the District Court case, attached as Exhibit #19 to the Request for
16 Judicial Notice In Support of Defendants' Motion to Dismiss was a copy of the
17 docket from the bankruptcy filed by Petitioner BROOKS Case No. 2:09-bk-36236-
18 VZ. This is part of the record in the present appeal, although Petitioner did not
19 include it as part of his Appendices. A true copy of the first seven pages of the
20 Request for Judicial Notice and Exhibit #19 is attached hereto as Appendix J.

21
22 Although argument concerning this bankruptcy was made, what was
23 apparently omitted from the record was a copy of two pertinent documents from
24 the bankruptcy: BROOKS bankruptcy schedules and Statement of Affairs,
25 attached hereto as Appendix K, and the Order of Discharge, attached hereto as
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1 Appendix L from Central District of California Bankruptcy Case No. 2:09-bk-
2 36236-VZ. These documents, BROOKS schedules and Statement of Affairs, and
3 the discharge, are pertinent to the issue in determining whether certiorari
4 should be granted, because BROOKS never disclosed in his bankruptcy any
5 mention of any claim that he had to rescind the note and deed of trust, and in
6 fact, listed his mortgage on the subject property (at 3050 E. Chevy Chase,
7 Glendale, California, owed to GMAC Mortgage) and did not check off the box
8 indicating that there was any dispute. He also failed to list ownership of any
9 claim anywhere in his schedules, including under Schedule B-35. Under the
10 law, his failure to list any mention of any claim, and listing his mortgage as
11 “undisputed” means the asset was never administered and still belongs to his
12 bankruptcy estate. BROOKS is collaterally estopped from proceeding forward
13 with enforcement of any remedy regardless of its validity.
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16 BROOKS omitted from his Statement of Facts any mention of his
17 bankruptcies and earlier cases.
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19 **4. LIST AND IDENTIFICATION OF PARTIES:**

20 The parties to the underlying case were as listed in the original District
21 Court caption from which this appeal derives: PINNACLE FINANCIAL
22 CORPORATION; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.;
23 GMAC MORTGAGE, LLC; EXECUTIVE TRUSTEE SERVICES, LLC;
24 EXECUTIVE TRUSTEE SERVICES LLC DBA ETS SERVICES LLC, ETS
25 SERVICES LLC, CINDY SANDOVAL; BANK OF NEW YORK MELLON TRUST
26 COMPANY, NATIONAL ASSOCIATION; RESIDENTIAL ASSET MORTGAGE
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1 PRODUCTS, INC., SERIES 2006-RS1 TRUST; DCB UNITED LLC; VAROUGAN
2 KARAPETIAN AND VINCENT KARAPETIAN; NANETTE KARAPETIAN; AND
3 DOES 1-12, INCLUSIVE.

4 However, the only parties that were served and responded in the
5 underlying litigation were: BANK OF NEW YORK MELLON TRUST COMPANY,
6 NATIONAL ASSOCIATION; RESIDENTIAL ASSET MORTGAGE PRODUCTS,
7 INC., SERIES 2006-RS1 TRUST; DCB UNITED LLC; VAROUGAN
8 KARAPETIAN AND VINCENT KARAPETIAN; NANETTE KARAPETIAN.

9 PINNACLE (believed to be the original loan broker) is long defunct and
10 never appeared, GMAC filed bankruptcy prior to the filing of the complaint. The
11 other defendants did not appear and were not part of the case.

12 The Bank of New York Mellon Trust Company, and its assignee Residential
13 Mortgage Products, was the lender.

14 DCB UNITED LLC was the bonafide purchaser at the foreclosure sale.
15 DCB was acting for VAROUGHAN KARAPETIAN and VINCENT KARAPETIAN,
16 who were the immediate successor transferees from DCB UNITED. The
17 KARAPETIANS commenced and won the unlawful detainer against BROOKS and
18 prevailed on BROOKS appeal. VAROUGHAN KARAPETIAN and VINCENT
19 KARAPETIAN later transferred the property to the present owner, NANETTE
20 KARAPETIAN (daughter of VAROUGHAN, sibling of VINCENT).

21 DCB UNITED LLC, and VAROUGHAN KARAPETIAN and VINCENT
22 KARAPETIAN no longer have a stake in the case, but NANETTE KARAPETIAN
23 is the owner having received title from the bonafide purchaser at the sale.

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5. REASONS FOR DENYING THE PETITION

BROOKS' present appeal does not merit review because Defendants' motions to dismiss were granted in the District Court, and affirmed on appeal to the Ninth Circuit, for reasons having nothing to do with any split of authority on a federal issue. Instead, he lost for several other reasons set out below.

(a) BROOKS was barred by res judicata and collateral estoppel after having been adjudicated to a final disposition the 2011 state court action removed to federal court, the 2013 state court judgment affirmed on appeal to the California Court of Appeal, the 2013 unlawful detainer judgment, affirmed on appeal.

(b) BROOKS was barred by claim preclusion by not having litigated his TILA claims in the earlier actions, or once having litigated them, failed to take action to reverse the adverse decisions.

(c) Under California law, even a foreclosure that might be defective is conclusively presumed valid if no action is taken to stop it, and the October 2012 foreclosure trustee's deed contains the recitals that it was properly conducted and sold to a bonafide purchaser. *California Civil Code Section 2924(c)*.

(e) BROOKS' filing of the District Court action on October 26, 2017 was well beyond any applicable Statute of Limitations for breach of contract, fraud, or any other theories arising out of his purported 2007 notice of rescission.

(d) BROOKS filed bankruptcy in 2009, failing to make any reference to his alleged claims herein which had supposedly arisen in 2007, and received a Chapter 7 discharge, thereby barring his claims under the doctrine of judicial estoppel.

1 **6. BROOKS LETTER TO THE SUPREME COURT (DATED 9/26/2018)**
2 **SHOULD BE DISREGARDED. TO THE EXTENT THAT THE LETTER IS**
3 **PART OF THE SUPREME COURT’S RECORD, RESPONDENT**
4 **CONTENDS THAT THE REFERENCE CONCERNING THE RULINGS OF**
5 **THE ARIZONA SUPERIOR COURT IS A SHAM. BROOKS SUED**
6 **PINNACLE FINANCIAL, A DEFUNCT CORPORATION WITHOUT**
7 **NOTICE TO THE OTHER PARTIES IN INTEREST, NOTABLY THE**
8 **PRESENT OWNERS, NANETTE KARAPETIAN RESPONDENT HEREIN.**

9 On September 26, 2018, Petitioner mailed a letter to the Supreme Court.
10 Respondent does not. In that letter, he references a ruling by the Arizona Superior
11 Court, Case No. 2018-092997, in which BROOKS sued, and defaulted, defunct
12 PINNACLE FINANCIAL CORPORATION. He claims to have received a ruling
13 voiding the note, deed of trust and all enforcement, presumably including the
14 foreclosure sale. Petitioner has not provided a copy of that Arizona default
15 judgment as part of his Appendix. No other defendants were named or given
16 notice, including the KARAPETIANS, and it is therefore not binding on them.
17 This Court should not be considering that letter as part of the record as it has
18 nothing to do with the Ninth Circuit’s dismissal of BROOKS appeal, but out of an
19 abundance of caution that the letter is part of the record, Respondent opposes it
20 being part of the review by this Court.

21 **7. CONCLUSION: BROOKS PETITION**
22 **SHOULD BE DENIED AS FRIVOLOUS.**

23 This case does not merit review because it has nothing to do with any split
24 of authority on a federal issue. BROOKS lost this case because he never
25 undertook timely action to stop the foreclosure sale and never litigated the claims
26 he now proposes to successful finality. Instead, he lost at earlier stages, failed to
27 appeal and then filed an action outside of the statutes of limitations, and in
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1 violation of the doctrine of judicial estoppel for failure to include mention of any
2 such claims in his bankruptcy filings.

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5 Date: February 13, 2019

STARRE & COHN, APC,

6 /s/ Gary A. Starre
7 By GARY A. STARRE
8 Attorney for Respondents:
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10 VINCENT KARAPETIAN,
11 NANETTE KARAPETIAN
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