

No. 20-703

ORIGINAL

In The Supreme Court for the United States of America

William Kinney Jr.,
Julie Ann Metcalf Kinney,
William X Nietzsche,
Petitioners,

v.

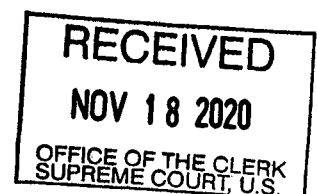
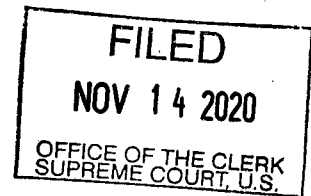
URBAN HOUSING DEVELOPMENT LLC,
U.S. BANK NA (As trustee for securitized trust
HSBC Trust HSBC Home Equity Loan Trust
2005-1 Trust,
Respondent,

On Petition for Review to the Oregon Supreme Court

PETITION FOR WRIT OF CERTIORARI

William Kinney Jr
Julie Ann Metcalf Kinney
William X Nietzsche
c/o 4406 N Mississippi Ave
Portland, Oregon [97217]
(503)-539-3784

Petitioners Sui Juris [Pro Se]



QUESTIONS PRESENTED

1. This Court often emphasizes the importance of preserving the public's trust in the legal system. But over the past decade, courts have left the public and homeowners with questionable decisions and actions that have marred the system. Unfortunately, millions harmed are average American's, their families and friends. Every American has been affected, as these outcomes have had a lasting negative effect on the economy and wealth, including record poverty, homelessness, health care costs, low wage jobs and government assistance, while infringing on Constitutional Rights. Herein, there are numerous questionable issues by the courts and others in favor of the numerous banks and lenders in this case, particularly HSBC Plc, Mortgage Electronic Registration Systems (MERS), the government's interest in MERS, and U.S. Bank NA, the alleged note owner. This case raises important issues over the government's direct financial interest in trillions of dollars' in taxpayer backed mortgages, FNMA as de facto State actor, national banks, mortgage securitization (RMBS), default insurance (CDSs and CDOs), Constitutional property rights, foreclosure and modification fraud, standing and void judgements in need of addressing. This case raises questions of Constitutionality of Oregon law that infringes on Due Process under Amendment V. Thus, the questions presented are:

- 1). Whether the Multnomah County Trial Court is without jurisdiction to Adjudicate the Defected Inferior FED action because of the Original jurisdiction of Petitioner's Verified Federal Complaint?
- 2). Whether or not Respondents Should be Allowed to Proceed with FED Action when Respondent UHD's Proper Remedy was an Action for Ejectment Under ORS 105.001?
- 3). Whether a Supersedeas Undertaking Requirement of the Value of "Use and Occupation" Should Be Equivalated to the Rate of the Purported Last Monthly Mortgage Invoice Statement?
- 4). Whether or Not it is Error for Respondent Multnomah County Trial Court to Rely Upon a Res Judicata Opinion of Dismissal of Counter-claims based Upon Dismissal of Petitioner's Federal Complaint?

PARTIES TO THE PROCEEDING

2. Petitioners, William Kinney Jr, Julie Metcalf Kinney and William X Nietzsche were Plaintiffs in the U.S. District Court; Petitioners, William Kinney Jr, Julie Metcalf Kinney were Defendants in the Multnomah County Circuit Court of the State of Oregon, as well as Counter-plaintiffs in said case with Petitioner William X Nietzsche as Third-party Intervenor; Said Petitioners are appellants both in the U.S.

Court of Appeals for the Ninth Circuit, No. 19-35876, and the Court of Appeals for the State of Oregon, No. A174061.

3. Respondent, U.S. Bank NA was a party throughout litigation. U.S. Bank is alleged to have exclusive interest in the 2004 DOT.
4. Respondent Urban Housing Development was a party throughout the litigations. UHD is the purported purchaser of the Kinney's home at the non-judicial foreclosure auction.

RULE 29.6 STATEMENT

5. None of the petitioners is a nongovernmental corporation, has a parent corporation or shares held by a publicly traded company.

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PETITION FOR A WRIT OF CERTIORARI

6. William Kinney Jr., Julie Metcalf Kinney, and William X Nietzsche, a Moorish People of the Americas, in proper persona sui juris, respectfully petitions the court of record for a Writ of Certiorari to review the order of the Oregon Supreme Court.

DECISIONS BELOW

7. The unpublished order of the Oregon Supreme Court, No. S068071, denying review was filed on October 28, 2020 (App. 1); the nonopinioned decision of the Oregon Court of Appeals, No. A174061, denying reconsideration was filed on September 29, 2020 (App. 2); the nonopinioned decision of the Oregon Court of Appeals, No. A174061, denying review of the trial court order relating to supersedeas undertaking was filed on August 25, 2020 (App. 3); the decision of Multnomah County Circuit Court, No. 18LT16339, relating to supersedes undertaking was filed July 7, 2020 (App. 4); the decision of Multnomah County Circuit Court, No. 18LT16339 dismissing with prejudice Petitioner's verified counter-claims was filed May 19, 2020 (App. 5); and the decision of the U.S. District Court, No. 3:18-cv-01930, dismissing with prejudice Petitioner's verified complaint was filed October 8, 2019 (App. 6) are attached hereto.

JURISDICTION

8. The non-opinioned order denying Review by the Oregon Supreme Court was entered on October 28th, 2020. The non-opinioned order of the Oregon Court of Appeals denying reconsideration was entered on September 30th, 2020. This petition is timely because made within 90 days of the Oregon Supreme Court Chief Justice Martha L. Walters' October 28, 2020, Order denying Review and Motions for Stays and Temporary Injunction.
9. This Court's jurisdiction rests on the Treaty of Peace and Friendship (1786); the Constitution for the United States of America (1791), Article 1, Section 9, Clause 2 and Article 3, Section 2; 28 USC § 2101; U.S. Supreme Court Rule 13; 28 U.S.C. § 1257(a), "the highest court of [the] State in which a decision could be had." See, e.g., *KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011) (per curiam).

CONSTITUTIONAL, STATUTORY & RULING PROVISIONS INVOLVED

10. U.S. Const. amend. V, cl. 3 & 4, state: "...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."
11. U.S. Const. Article III, § 2, cl. 1: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the

Laws of the United States, and Treaties made, or which shall be made, under their Authority., to Controversies to which the United States shall be a Party...". Concurring, 28 U.S.C. § 1345 states: "the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress." (June 25, 1948, ch. 646, 62 Stat. 933.).

12. U.S. Const. Art. VI, cl. 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

INTRODUCTION

13. The most essential cog of justice is jurisdiction, the essence of a Courts power to adjudicate, and in lack thereof no Court action can be valid. See *Mansfield, C. & L. M. R. Co. v. Swan*, lli U.S. 379, 382 (1884) "The requirement that jurisdiction be established as a threshold matter is 'inflexible and without exception,' "; for "jurisdiction is power to declare the law," and 'without jurisdiction the court cannot

proceed at all in any cause,' " Steel Co. v. Citizens for Better Environment, 523 U.S. 83, at 94 (1998); Ruhrgas AG v. Marathon Oil Co. et al., 526 U.S. 574 (1999).

14. The US Constitution has long governed and asserted the importance of Due Process and fair legal proceedings as essential to our system of justice. Moreover, the same revered document outlines the necessary rights granted unto the people to protect against those who attempt to pervert it, including entrusted corporations and the government.¹ A nagging issue compounding post Financial Crisis, is the vast number of Americans that have been and continue to be affected by the foreclosure crisis. The crisis transferred billions of wealth from the people into the coffers of entrusted banks like U.S. Bank NA and to the US Government through its seizure of FNMA. Many of the foreclosures that created the record poverty and homelessness, were wrongful and violated Constitutional rights, Federal law, long-held state High Court rulings and the direction of this Court. Systemic failures at standing, by improperly bringing many of these foreclosures in the wrong venue, corrupted Chain of Title through securitization, wrongful rehypothecation, and unlawful third-party

¹"...The people - the people - are the rightful masters of both Congresses, and courts - not to overthrow the Constitution, but to overthrow the men who pervert it—". Abraham Lincoln, [Sept. 16-17, 1859] (Notes for Speech in Kansas and Ohio), Page 2.

proceedings, are vital issues to proper adjudication of millions of cases, past, current and future. Many foreclosures involved blatant failures of government mandated modification publicly scorned by some Courts and ex-government officials. Tactics utilized are eerily similar across countless victims' stories and complaints defining the schemes. Ethics are lost for taking advantage of Americans when financially vulnerable, creating a situation impossible to overcome and eventually fall susceptible to misrepresentations procuring countless profitable securitizations, rehypothecations and defaults.

15. U.S. Bank NA and other national banks have been regularly utilizing federal preemption privileges to avoid victims claims but continue to wrongfully bring mass foreclosures in those same state venues. Some state officials and courts turned a blind eye to the facts and wrongdoings, and allowed U.S. Bank NA, other foreign banks, MERS and FNMA to wrongfully obtain millions of properties through fraud. In Florida, the infamous Rocket Docket fostered countless wrongful proceedings and Due Process failures with judges closing hundreds of cases per day while violating homeowners Constitutional Rights. A Broward foreclosure judge was noted for dosing around 786 cases in one day. Due Process? Courts have allowed U.S. Bank NA to go unpunished for too long. U.S. Bank NA's multiple record Billion-dollar

6.

regulatory settlements, demand greater attention by Courts to the numerous victims' claims and to remove the hiccups and legal speedbumps utilized to deter justice, including within this case.

16. This Court is the ultimate adjudicator for the people and the Constitution, and this case presents the ideal opportunity to address these issues that have continued to plague Americans and the justice system for over a decade. The law must not rule on the impact or fallout from millions of improper and void judgements, it must focus on the facts and the millions of victims whose Constitutional rights have been violated.

STATEMENT OF THE CASE

17. On November 5, 2018, Petitioner's originally commenced this action in the U.S. District Court case #3:18-cv-01930 by filing a Verified Complaint seeking specific performance on the Deed of Trust, damages for breach of contract, various state and federal statutory violations, and injunctive relief.
18. Two weeks later, Respondents commenced an inferior Forcible Eviction Detainer (FED) action in the Multnomah County Court case#18LT16339.

19. As further described in the Verified Counterclaim, in May 2002, Petitioners William and Julie Kinney (The Kinney's) fell victim to its first predatory loan after the Kinney's eldest teenage son at the time was incarcerated for traffic-related offenses in February 2002.
20. The Kinney's, in order to afford legal representation for their son, executed its first (1st) mortgage Deed of Trust in favor of Defendant Freedom Mortgage Corporation (FMC).
21. In March 2004, Petitioners, under extreme duress from an 'upward adjustable rate rider' in their first loan, coupled with the incarceration of their teenage son, received a solicitation call from Beneficial Oregon Incorporated (BOI) wherein Plaintiffs fell victim to another predatory refinancing agreement, therewith executing a second (2nd) mortgage Deed of Trust with BOI.
22. Prior to this, at some point during the period of May 2002 through March 2004, FMC had assigned its beneficial interest to Mortgage Electronic Recording Systems (MERS), without notice or knowledge to Petitioners, and without making the proper recordation in the mortgage records at the county level.

23. MERS then assigned FMC's beneficial interest to George P. Fisher, Successor Trustee acting on behalf of BOI.
24. The Kinney's remained in compliance with the second (2nd) mortgage Deed of Trust until about January 2017, where the Kinney's received billing cycles from two separate servicers, HSBC - whom is the parent company of BOI - and Rushmore Loan Management Services (RLMS).
25. The Kinney's then began its onslaught of written discovery request to determine which servicer was entitled to enforce the Note.
26. Subsequently, the Note goes through a series of assignments, eventually ending up with U.S. Bank REO Trust (USBT). In June 2018, Clear Recon Trust and RLMS inexplicably declared a default and initiated a non-judicial foreclosure proceeding that took place October 23, 2018, wherein Defendant Urban Housing Development (UHD) purportedly bought the Kinney's property.
27. During the course of Petitioners federal litigation, Petitioners joined to its federal Verified Complaint Roman Ozeruga (owner of UHD), Mark G. Passannante (UHD's state counsel) and Terrance Slominski (UHD's federal counsel) for their co-conspiratorial collusion in igniting the inferior state court

FED action two weeks after being served with Petitioner's Verified Federal Complaint.

28. Petitioners fended off UHD's first unlawful attempt in Multnomah County FED Court by filing several Notice of Removals wherein purported Multnomah County Judge Stephen Bushong divested himself of jurisdiction erroneously ruling that Petitioners successfully stayed state court proceedings removing jurisdiction to federal court by Petitioners filing their Verified Federal Complaint on November 5, 2018.
29. On or about December 9, 2018, purported federal judge Michael H. Simon later affirmed (in an order denying Petitioners application for a Temporary Restraining Order) that Petitioners had original jurisdiction and not removal jurisdiction by the filing of their Verified Federal Complaint.
30. In said order denying TRO, purported federal judge Michael H. Simon trespassed on the case by erroneously ruling that MERS' involvement in the Kinney's chain of title was a mere "scrivener's error."
31. On or about September 24, 2019, Petitioners served Respondent U.S. Bank National Association's attorney Tom Purcell with a subpoena duces tecum demanding production of the purported 2004 original mortgage note

and deed of trust wherein the next day attorney Tom Purcell wrote a desperation emergency email to purported federal judge Michael H. Simon, along with stringing Petitioners and approximately sixteen other attorneys in the same email, explaining being served with said subpoena by Petitioner Nietzsche.

32. On September 26, 2019, purported federal judge Michael H. Simon further trespassed upon Petitioners case by convening an emergency hearing against Petitioners' objection whereby ruling that Petitioners' subpoena served upon Tom Purcell was quashed and halting any further discovery or filings in said case pending purported federal judge Michael H. Simon catching up with all the previous filings in the case.
33. Petitioners moved the court to join purported federal judge Michael H. Simon whereby Simon denied said motion.
34. Subsequently, on October 8, 2019, purported federal judge Michael H. Simon dismissed all of Petitioners verified federal claims with prejudice.
35. On October 15, 2020, Respondent UHD then re-ignited its defected inferior state court FED action against Petitioners wherein Petitioners filed a Verified Counter-claim.

36. Purported judge Matarazzo was then appointed trial judge in which Petitioners attempted to recuse several times.
37. On February 26, 2020, Petitioner William X Nietzsche appeared in special restricted appearance at an un-scheduled hearing wherein Matarazzo converted said hearing into a trial-by-surprise with Petitioners William and Julie Kinney in absentia.
38. Matarazzo relied upon Simon's dismissal of Petitioner's Verified Federal Complaint as res judicata whereby awarding possession of the subject property structure to Respondent UHD.
39. On May 19, 2020, Judith Matarazzo signed off on a General Judgement awarding possession of the subject property structure to Respondent UHD.
40. On May 25, 2020, Petitioners filed its supersedeas undertaking in the amount of \$260,000, agreeing to pay \$1000 per month, plus promising not to commit waste upon the subject property structure.
41. Respondent UHD objected to the form of Petitioners supersedeas bond arguing that Petitioners should pay \$2400 per month and a \$10,000 waste bond.

42. Matarazzo granted Petitioners a stay predicated upon Petitioners paying into the court as security \$1600 per month plus a \$10,000 waste bond by August 2, 2020.
43. On July 20, 2020, Petitioners filed in the Oregon Court of Appeals its Motion for Review of Trial Court's Order Relating to Supersedeas Undertaking wherein an automatic fourteen (14) day stay was issued until August 5, 2020.
44. On August 12, 2020, Matarazzo signed a writ of execution ordering Multnomah County Sheriffs to remove Petitioners from the subject property structure.
45. On August 25, 2020, the Appellate Court Commissioner denied Petitioner's Motion for Review of Trial Court's Order Relating to Supersedeas Undertaking upholding the Trial court's initial order.
46. On September 8, 2020, Petitioners filed its Motion for Reconsideration of the Appellate Commissioners decision on Appellant's Motion for Review of Trial Court's Order Relating to Supersedeas Undertaking.
47. On September 9, 2020, Multnomah County Sheriffs removed Petitioners at gunpoint from the subject property structure.

48. On September 11, 2020, Petitioners filed with Multnomah County Court its Emergency Ex Parte Motion for Relief from Order Revoking Supersedeas Undertaking.
49. On September 16, 2020, Petitioners appeared by special and restricted appearance in front of Multnomah County judge Mark A. Peterson wherein Peterson denied Appellant's Emergency Ex Parte Motion for Relief from Order Revoking Supersedeas Undertaking and ruling that UHD had an extension of fifteen (15) days to re-issue a second writ of execution to remove Petitioners from the subject property structure as Respondent UHD admitted that Petitioners still maintained adverse possession of the subject property structure.
50. On September 23, 2020, Petitioners filed with the Oregon Court of Appeals its Motion for TRO and Temporary Injunction.
51. On September 24, 2020, Counter-defendant/counsel for UHD Mark Passanante motioned the trial court for an Ex Parte hearing inquiring into the status of the second (2nd) writ of execution.
52. The next day September 25, 2020, Petitioners by special and restricted appearance and Counter-defendant Passannante appeared in front of purported Multnomah county judge Mark A. Peterson wherein Mark A. Peterson

refused to acknowledge Appellant's Motion for TRO and Temporary Injunction filed with Oregon Court Appeals September 23, 2020, and ruled that if Matarazzo would not sign the writ of execution, then Peterson himself would.

53. On Sunday September 27, 2020, Matarazzo signed off on the Second (2nd) Writ of Execution to remove Petitioners from the subject property structure.
54. On September 30, 2020, the Oregon Appellate Court denied Appellant's Motion for Reconsideration and Appellant's Motion for TRO and Temporary Injunction.
55. On October 20, 2020, Petitioners filed with the Oregon Supreme Court its Petition for Review.
56. On October 28, 2020, the Oregon Supreme Court denied said Petition for Review.

REASONS FOR GRANTING THE WRIT

57. The questions presented have importance beyond the Kinney case, because:
58. Portland, Oregon has the 4th highest number of homeless people in the U.S.A.
59. ORS 86.735 which allows non-judicial foreclosures in Oregon is unconstitutional. To allow non-judicial foreclosures to continue in

Oregon deprives the people of their property without due process of law infringing the People's 5th Amendment secured right to a jury trial; and it also perpetuates the problem of homelessness, allowing lenders and developers to escheat the Peoples property without due process of law and/or any judicial oversight.

60. In reference to the question regarding supersedeas undertaking, the Oregon Court of Appeals in LIG was uncertain as to whether a supersedeas undertaking, which particularly applies to the FED context, can be reasonably applied to the mortgage/foreclosure context, which involves a dispute to title and possession. To allow purported lenders to convert its monthly mortgage payments into monthly projected rents during an expected appeal where said mortgage is still in dispute, works an injustice to the homeowners and deserves resolve by the Supreme Court.
61. The Court should therefore grant this petition to address these serious issues, along with the multiple frauds committed in this case, and to correct wrongful precedent set by national Courts, including the Oregon Court of Appeals and the Oregon Supreme Court's non-opinioned order, for past, present and future generations.

LEGAL QUESTION(S) PRESENTED

I. This Court Should Grant Certiorari to address whether the Multnomah County Trial Court was without jurisdiction to Adjudicate the Defected Inferior FED action because of the Original jurisdiction of Appellant's Verified Federal Complaint?

62. Appellants were first-to-file its Verified Federal Complaint on November 5, 2018, regarding the same property structure;
63. wherein Defendant UHD received service of said complaint on November 8, 2018.
64. On November 19, 2018, Respondent UHD filed its inferior FED action in the Multnomah County Circuit court (case#18LT16339).
65. The Multnomah County Trial court is without jurisdiction to adjudicate the defected inferior FED action because of the Original jurisdiction of Appellant's Verified Federal Complaint.
66. Said inferior State Trial Court abused its discretion thus acting ultra-vires by continuing to adjudicate the FED action despite federal court's Original Jurisdiction, and then erroneously divesting itself of jurisdiction based on Petitioner's filing of its second (2nd) Notice of Removal.

67. Although the First-to-File Rule is a rule of general acceptance amongst federal courts, said inferior State Court FED action violates the basic fundamentals of the first-to-file rule;
68. As well as infringes Article 6, Section 2, The Supremacy Clause, of the Constitution for the United States of America (1791) in which the Princess Lida doctrine sprung.
69. The Princess Lida doctrine applies in this case:
[I]f...two suits are in rem, or quasi in rem, so that court or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the jurisdiction of the one court must yield to that of the other.

We have said that the principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction,

the court must control the property. See *Princess Lida v. Thompson*, 305 U.S. 456, 466 (1939); See also *United States v. \$270,000 in United States Currency, Plus Interest*, 1 F.3d 1146, 1147-48 (11th Cir. 1993) (quoting *Penn Gen. Casualty Co. v. Commonwealth*, 294 U.S. 189, 195 (1935)); See also *Cassity v. Pitts*, 995 F. 2d 1009, 1012 (10th Cir. 1993); *Scarabin v. Drug Enforcement Admin.*, 966 F.2d 989, 995 (5th Cir. 1992) (finding that an initial state action regarding the forfeiture of alleged drug proceeds had priority over the federal agency's subsequent actions in federal court).

70. The Supreme Court ruled that the Common Pleas Court of Pennsylvania was without jurisdiction of the suit subsequently brought for the same or similar relief, and that the parties in that suit were properly enjoined from pursuing it.
71. This principle, which has become known as the "Princess Lida Doctrine", has been applied routinely throughout the country. See *Dailey v. National Hockey League*, 987 F. 2d 172, 175 (3d Cir. 1993) (acknowledging the continuing validity of the Princess Lida doctrine). In short, "[t]he Princess Lida doctrine requires abstention based upon principles of comity and in rem jurisdiction." *Selton v. U.S. Bank Trust Nat. Assn.*, SD, No. 6:14-cv-1278-ORL-37KRS,

2015 WL 4987706, *4, 2015 U.S. Dist. LEXIS 109487 (M.D. Fla. August 19, 2015).

72. As indicated, the Princess Lida doctrine applies equally to state and federal courts. See *Cartwright v. Garner*, 751 F. 3d 752, 761 (6th Cir. 2014) (“The principle that the court first assuming jurisdiction over the property may maintain and exercise that jurisdiction is applicable to both state and federal courts.”).
73. Therefore, Respondent’s FED Action should be dismissed with prejudice and said Final Judgement rendered in relation thereto should be declared null and void for want of jurisdiction.

II. This Court Should Grant Certiorari to address whether Respondents Should be Allowed to Proceed with FED Action when Respondent UHD’s Proper Remedy was an Action for Ejectment Under ORS 105.005?

74. In *LIG Investments v. Roach*, 215 Or. App 210, 214 (2007), the court determined that, “in the absence of the landlord-tenant relationship between plaintiff and defendant, it is unclear that a FED detainer action was the correct mechanism for the gaining possession of real property from a former owner.” (See *Bunch v. Pearson*, 186 Or App 138, 142, 62 P3d 878, *rev den*, 335 Or 422 (2003) (“unlawful holding by force” requirement for forcible entry and

detainer action refers only to the landlord-tenant relationship).

75. In *LIG*, the Oregon Court of Appeals did determine that the value of the use and occupation of real property in a FED action is the fair market rental value of the property;
76. However, the court was “unclear” whether that standard was reasonably applied to a case involving the mortgage/foreclosure context where there exist no landlord/tenant relationship between the parties.
77. As in this case where the dispute is in regards to title and possession, the correct remedy for Respondent UHD was an action for Ejectment under ORS 105.005;
78. Instead, Respondent UHD pursued a FED action under ORS 105.110;
79. Said procedural defect is fatal to Respondent’s chances of winning on appeal.
80. The court shall clarify whether the requirement of a supersedeas undertaking can be reasonably applied in a mortgage/foreclosure context when there exist no landlord/tenant relationship between the parties.
81. Respondent’s position is that the value for “use and occupation,” if applied in a

mortgage/foreclosure context, shall be the status quo ante as if Appellant's mortgage were still in effect;

III. This Court Should Grant Certiorari to address Whether a Supersedeas Undertaking Requirement of the Value of "Use and Occupation" Should Be Equivalated to the Rate of the Purported Last Monthly Mortgage Invoice Statement?

82. The 2018 amendments to the federal rules of civil procedure (Rule 62) and appellate procedure (Rule 8) indicate that "stays pending appeal should be the norm in mortgage foreclosure appeals." *Deutsche Bank Nat'l Tr. Co. as Tr. for GSAA Home Equity Tr. 2006-18 v. Cornish*, 759 F. App'x 503, 504 (7th Cir. 2019).
83. That is because (1) the lender has the real property as the security it bargained for and (2) residential borrowers suffer irreparable damage during the appeal.
84. If said defected FED action is not deemed void for want of jurisdiction, then, *arguendo*, the "value of use and occupation" can only be equivalated to the rate of the last purported monthly mortgage invoice statement at the time Petitioner's initiated its original federal lawsuit which is approximately \$745.

85. The fair market rental value for a culturally diverse elderly couple who has traditionally owned their home since 1955 and who has survived gentrification and mass displacement of over 10,000 less fortunate families in North/North East Portland Oregon, is \$745.

IV. This Court Should Grant Certiorari to address Whether it is Error for Respondent Multnomah County Trial Court to Rely Upon a Res Judicata Opinion of Dismissal of Counter-claims based Upon Dismissal of Petitioner's Federal Complaint?

86. On October 9, 2019, a final judgment was entered by the U.S. District Court dismissing with prejudice Petitioners federal complaint wherein on October 15, 2020, Petitioners filed its timely notice of appeal to Ninth Circuit wherein Petitioners are still yet to file its opening brief.
87. Petitioners were deprived of their fundamental right to a jury trial by said dismissal with prejudice of their substantial verified claims raised in their federal complaint.
88. It is error for Judith Matarazzo to rely on the federal dismissal of Petitioner's Verified federal Complaint as a res judicata basis to dismiss Petitioner's verified counterclaim when Petitioners have a pending federal appeal in the Ninth Circuit on related issues.

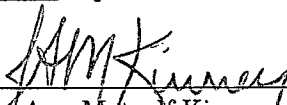
89. This deprives Petitioners of its substantial right to a jury trial and due process to an appeal as protected by the 5th Amendment to the Constitution for the United States of America 1791.

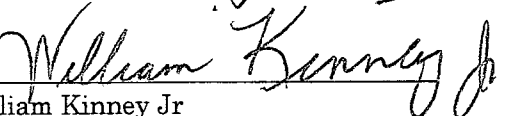
CONCLUSION

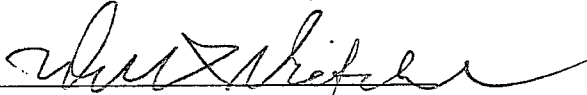
90. For all these reasons, the Court should grant this petition.

I affirm the abovesaid to be true and correct under penalties of perjury.

DATED this 8th day of November, 2020.

By 
Julie Ann Metcalf Kinney
In Solo Proprio, In Proper Persona,
Sui/Heredes, Sui Juris [Pro se]

By 
William Kinney Jr
In Solo Proprio, In Proper Persona,
Sui Heredes, Sui Juris [Pro se]

By 
William X Nietzsche, as trustee
for KRME International Trust
In Solo Proprio, In Proper Persona,
Sui Heredes, Sui Juris [Pro se]