No. 25-7589

IN THE
SUPREME COURT OF THE UNITED STATES

PAMELA McKETHAN,
Petitioner,

v.

GSLS GA, LLC,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION

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INTRODUCTION

Pursuant to Rule 15.6 of the Rules of this Court, Petitioner respectfully submits this Reply Brief in response to the new arguments raised in Respondent's Brief in Opposition.

Respondent's Brief does not answer the constitutional questions presented in the Petition. Instead, Respondent repeatedly attempts to recharacterize this case as an ordinary foreclosure dispute governed exclusively by Georgia foreclosure law and insulated from review through procedural doctrines, including standing and res judicata, notwithstanding that no court has ever adjudicated the constitutional adequacy of notice on the merits. Those arguments do not address the federal constitutional questions presented for this Court's review.

Petitioner does not seek review because a foreclosure occurred or because Petitioner disagrees with the outcome reached by the Georgia courts. Rather, Petitioner seeks review because this case presents recurring and substantial federal constitutional questions concerning the deprivation of real property without constitutionally adequate notice, the lawful authority required to exercise the extraordinary power of nonjudicial foreclosure, and whether procedural doctrines may preclude review of alleged violations of the Due Process Clause of the Fourteenth Amendment.

Respondent's Brief acknowledges that the certified foreclosure notice was returned undelivered before the foreclosure sale yet argues that compliance with Georgia's mailing statute alone resolves the issue. That argument does not answer the constitutional question presented. The Petition asks whether due process permits a foreclosure to proceed after the foreclosing party possesses actual knowledge that the foreclosure notice did not reach the homeowner before depriving that homeowner of real property. Respondent's reliance upon state foreclosure procedures does not resolve that federal constitutional question.

Respondent likewise characterizes Petitioner's claims as an impermissible challenge to the assignment of the Security Deed. That characterization misstates the Petition. Petitioner does not ask this Court to adjudicate a private contractual dispute between lenders or to invalidate an assignment merely because Petitioner is the borrower. Rather, Petitioner challenges whether Respondent demonstrated lawful authority to exercise the extraordinary power of nonjudicial foreclosure where the bankruptcy proceedings concerning SouthStar Funding call into question the continuity of the chain of authority upon which Respondent relies. Accordingly, Petitioner's challenge concerns Respondent's asserted authority to foreclose, not merely the validity of an assignment between private parties.

Finally, Respondent repeatedly suggests that this case presents no question warranting review under Supreme Court Rule 10. To the contrary, the Questions Presented extend well beyond Petitioner's individual foreclosure. They concern whether constitutional due process protections may be satisfied after the foreclosing party possesses actual knowledge that its foreclosure notice did not reach the homeowner, whether lawful authority to exercise the power of nonjudicial foreclosure has been demonstrated, and whether procedural doctrines may foreclose review of substantial constitutional questions. Those issues affect homeowners throughout the Nation and present compelling reasons for this Court's review.

I. RESPONDENT'S RELIANCE UPON O.C.G.A. § 44-14-162.2 DOES NOT ANSWER THE CONSTITUTIONAL QUESTION PRESENTED

Respondent argues that the foreclosure complied with O.C.G.A. § 44-14-162.2 because notice was mailed in accordance with Georgia's statutory foreclosure procedures. The Security

Deed itself forecloses that argument. The Security Deed, recorded June 9, 2006 at Book 42758, identifies the Property Address as 7 Cross Street NW, Atlanta, Georgia 30318 in no fewer than four separate places within the instrument: the body of the Security Deed itself (Pg. 157), the attached legal description (Pg. 169), the 1-4 Family Rider (Pg. 172), and the Adjustable Rate Rider (Pg. 175). [Security Deed, Bk. 42758, Pgs. 157, 169, 172, 175]. Respondent's own Assignment, executed September 26, 2012, identifies the Property Address as 7 Cross Street NW. [Petitioner's Appendix F-4].

Notwithstanding its own governing instrument and its own assignment, Respondent's Notice of Sale Letter, dated January 4, 2013 — the notice immediately preceding the February 5, 2013 foreclosure sale — was addressed and mailed to 2407 Cross Street NW, a different address than the one appearing in the Security Deed. [Petitioner's Appendix E-2, E-3]. Respondent's own Brief in Opposition admits that its earlier, October 12, 2012 notice, sent to that same 2407 Cross Street Atlanta GA 30318 address, "was returned as undeliverable as addressed, indicating that the Property was vacant." [Respondent's Brief, Statement of Facts ¶5, citing Petitioner's Appendix E-1]. Respondent therefore does not dispute that it possessed documented proof, from the United States Postal Service itself, that mail to 2407 Cross Street would not reach Petitioner, and that its own governing instrument identified a different address altogether.

O.C.G.A. § 44-14-162.2 requires that notice be sent "to the property address," meaning the address identified in the security instrument, "or to such other address as the debtor may designate by written notice to the secured creditor." Respondent has not shown, and cannot show, that Petitioner ever designated 2407 Cross Street as an alternate address by written notice to Respondent. Nor would informal indicia of an address suffice under Georgia law. See Colbert v. Branch Banking & Trust Co., 302 Ga. App. 687, 691 S.E.2d 598 (2010) (debtor's obligation to provide written notice of an address change is not satisfied by a phone call, a return address on a payment envelope, or even the creditor's actual knowledge of a different address). Colbert and its progeny protect a creditor that mails notice to the address contained in the security instrument when a debtor has since relocated without providing formal written notice of a new address. They do not extend to, and should not be extended to, a creditor that abandons the address in its own governing instrument, mails instead to a different address of its own choosing, and does so again after already receiving proof from its own mail carrier that the substitute address does not work.

The touchstone for evaluating the constitutional sufficiency of notice is set forth in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). There, this Court held that due process requires notice "reasonably calculated, under all the circumstances," to apprise the affected party and afford a meaningful opportunity to be heard. Mullane, 339 U.S. at 314. A method of notice cannot be reasonably calculated to succeed when the party sending it already possesses documented proof, from its own mail carrier, that the method has failed.

This is precisely the circumstance Jones v. Flowers addresses. This Court held that "[w]hen mailed notice ... is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." Jones v. Flowers, 547 U.S. 220, 225 (2006). Here, a reasonable additional step was not merely available but was already sitting in Respondent's own file: the address contained in its own Security Deed and its own Assignment. Respondent's Brief does not explain why it mailed the controlling Notice of Sale to the same undeliverable address rather than to the address its own governing instrument identified as correct.

The question presented is therefore not whether a notice was placed in the mail, or whether Petitioner formally designated an alternate address. The question is whether the Due Process Clause permits a foreclosing party, having already received documented proof that a chosen address does not work, to proceed to take a homeowner's property by mailing controlling notice to that same address again, while its own governing instrument identified a different, correct one all along. That question is unanswered by Respondent's Brief and warrants this Court's review under Rule 10.

II. RESPONDENT MISCHARACTERIZES PETITIONER'S CLAIM AS AN ASSIGNMENT DISPUTE

Respondent argues that Petitioner lacks standing to challenge the Assignment of the Security Deed, relying on Georgia authority holding that a mortgagor generally lacks standing to contest the terms of an assignment between a lender and its successor. See Montgomery v. Bank of America, 321 Ga. App. 343 (2013); Larose v. Bank of America, 321 Ga. App. 465 (2013); Ames v. JP Morgan Chase Bank, N.A., 298 Ga. 732 (2016); Jurden v. HSBC Mortg. Corp., 330 Ga. App. 179 (2014). That line of authority addresses a different question than the one Petitioner raises.

Petitioner does not challenge the terms of the Assignment, the consideration exchanged, or any other private contractual matter between MERS and Respondent. Petitioner challenges whether the entity purportedly acting through MERS as nominee — SouthStar Funding, LLC — had any legal existence at the time the Assignment was executed. The Georgia Secretary of State's records establish that SouthStar Funding, LLC was administratively dissolved effective August 20, 2011. [Petitioner's Appendix F-1]. The Assignment conveying the Security Deed to Respondent was executed more than a year later, on September 26, 2012, by "Mortgage Electronic Registration Systems, Inc. ('MERS'), solely as nominee for SouthStar Funding, LLC." [Petitioner's Appendix

F-4]. A nominee acts on behalf of a principal; where the named principal has been dissolved and no longer exists as a legal entity, the question of whether an instrument executed in that principal's name conveys any interest is not a question of assignment validity between contracting parties — it is a question of whether the assignor had the legal capacity to act at all. The Georgia standing decisions Respondent cites address the former question. None of them addresses the latter.

This defect is compounded by the bankruptcy record. As detailed in paragraphs 5 and 6 of Appendix F-2, SouthStar Funding, LLC permanently closed its doors and completely wrote off its outstanding mortgage loans prior to its 2007 Chapter 7 bankruptcy filing. Because the lender had already entirely divested itself of these assets and ceased operations pre-petition, there were no active loan assets or remaining transfer authority to pass into the bankruptcy estate. Faced with this empty asset pool, the bankruptcy court's March 1, 2010 order approved the trustee's formal abandonment of the estate's interest under 11 U.S.C. § 554. This total lack of legal existence is further cemented by public organic records from the Georgia Secretary of State, which show that SouthStar Funding, LLC was officially and permanently dissolved.Under the Supremacy Clause of the United States Constitution, these federal bankruptcy statutes and federal court orders are the supreme law of the land, overriding any state-level mechanisms and ensuring that the asset pool was entirely eviscerated. By operation of law, this sequence of events establishes a complete and unbroken absence of title. Because the lender stripped itself of authority pre-petition, the trustee subsequently abandoned any remaining corporate remnants in 2010, and the state dissolved the corporate entity entirely, the bankruptcy estate possessed absolutely nothing left to convey to any subsequent entity. Consequently, any later purported transfer to GSLS more than two years later on September 26, 2012, is an absolute legal nullity executed by an entity entirely devoid of the underlying authority to transfer the asset. Therefore, a state court's judgment upholding a foreclosure premised on such a conveyance, without addressing whether federal bankruptcy law permitted or precluded it, presents the precise federal question this petition's third Question Presented raises.

Respondent's Brief does not address the dissolution date, does not explain how a dissolved entity can act as a principal through a nominee, and does not address the interaction between the Bankruptcy Abandonment Order and the September 2012 Assignment. Respondent's standing argument therefore does not answer the question Petitioner actually presents. It answers a different question — whether a borrower may contest the terms of an assignment — that this Petition does not ask.

III. RESPONDENT'S RELIANCE UPON RES JUDICATA DOES NOT ANSWER THE CONSTITUTIONAL QUESTIONS PRESENTED

Respondent argues that Petitioner's claims are barred by res judicata because the notice issue was allegedly raised in the 2017 action and its subsequent appeal. Respondent points to Petitioner's 2019 appellate brief, which referenced the mismatch between the address used for mailing and the address stated in the recorded instruments. That reliance does not establish that the constitutional question presented here was ever adjudicated.

Res judicata requires a prior judgment on the merits of the claim sought to be precluded. The 2017 action was resolved by summary judgment, and the Court of Appeals' 2020 affirmance did not address the constitutional adequacy of notice under Jones v. Flowers or the Due Process Clause; nor did it address Respondent's own admission — made for the first time in this Court, in Respondent's Brief in Opposition — that the October 2012 mailing was returned as undeliverable. [Respondent's Brief, Statement of Facts ¶5]. That admission is not something the 2017 or 2019 courts evaluated, because Respondent's Brief in Opposition post-dates all of those proceedings by several years. A party cannot be precluded from a claim by a judgment that never considered the specific evidentiary admission the claim now rests upon.

Nor did the Superior Court's 2023 dismissal of the 2022 action, affirmed in 2025, adjudicate the constitutional question on the merits. That dismissal rested on res judicata and collateral estoppel grounds, treating the 2017 judgment as preclusive without independently examining whether the notice given satisfied due process. A judgment that itself rests on preclusion, rather than on an independent merits determination, cannot supply the missing merits adjudication that res judicata requires in the first instance. Respondent's Brief does not identify any point in this litigation's history at which a court actually weighed whether mailing controlling foreclosure notice to an address absent from the Security Deed, after receiving proof that the address was undeliverable, satisfied the Fourteenth Amendment. Respondent's procedural defense assumes that adjudication occurred. It did not.

This distinction matters because this Court's decisions in Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988), and Armstrong v. Manzo, 380 U.S. 545 (1965), establishes that a party who was denied constitutionally adequate notice cannot be bound by procedural doctrines premised on an opportunity to be heard that never occurred. Respondent's Brief does not distinguish those decisions; it does not explain why a state court may treat a constitutional question as resolved when no court has ever ruled on it. The application of res judicata to bar review of a due process claim that has never been adjudicated on its merits is itself the recurring, substantial federal question this Petition presents, and Respondent's Brief does not answer it.

IV. THIS CASE PRESENTS A RECURRING FEDERAL QUESTION WARRANTING REVIEW UNDER RULE 10

This case is not limited to an isolated dispute over one mailing. It presents the recurring question whether a foreclosing party's actual knowledge that its notice failed to reach a homeowner — confirmed by its own postal record — can be squared with the Due Process Clause when the party proceeds regardless. Because nonjudicial foreclosure is authorized by statute in the majority of states, and because the circumstances here — a returned, undeliverable notice followed by a second mailing to the same flawed address — are not unique to this case, the question of what due process requires once a foreclosing party has actual knowledge of notice failure is one likely to recur and remains unsettled.

CONCLUSION

Respondent's Brief in Opposition does not answer the federal constitutional questions presented in the Petition. Instead, Respondent attempts to recast those questions as ordinary issues of Georgia foreclosure law, procedural defenses, and private assignment disputes. Those arguments do not resolve whether the Due Process Clause permits the deprivation of real property after the foreclosing party possessed actual knowledge that the foreclosure notice had not reached the homeowner before proceeding with the foreclosure sale. Nor do they resolve whether Respondent demonstrated lawful authority to exercise the extraordinary power of nonjudicial foreclosure before depriving Petitioner of her constitutionally protected property interest.

This Petition does not seek review merely because Petitioner disagrees with the outcome of the state court proceedings. Rather, it presents recurring federal constitutional questions concerning constitutionally adequate notice, the lawful exercise of the extraordinary power of nonjudicial foreclosure, and the extent to which procedural doctrines may foreclose meaningful judicial review of substantial constitutional claims that no court has ever adjudicated on the merits.

The Questions Presented extend beyond Petitioner's individual circumstances. They concern constitutional protections that affect homeowners throughout the Nation whenever private property may be taken through nonjudicial foreclosure. The resolution of those questions has significance far beyond this case and bears directly upon the protections guaranteed by the Due Process Clause of the Fourteenth Amendment.

For these reasons, and for the reasons stated in the Petition, Petitioner respectfully requests that this Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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