S213137

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

SEP 26 2013

Frank A. McGuire Clerk

Deputy

CAROL COKER,
Appellant,

vs.

J.P. MORGAN CHASE BANK, N.A. for itself and as successor in interests to
CHASE HOME FINANCE, LLC,
Respondent,

FROM THE SUPERIOR COURT FOR SAN DIEGO COUNTY

Hon. Luis R. Vargas, Judge
Court of Appeals Docket No.: D061720
Superior Court No.: 37-2011-00087958-CU-MC-CTL

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

In *Coker*, the Court of Appeal held that Cal. Code of Civil Procedure § 580b negates the lender from seeking a deficiency after short sale. This opinion is nothing more than the reaffirmation of section 580b's protections and analysis outlined in *Roseleaf Corp. v. Chierighino* (1963) 59 Cal.2d 35. The Court of Appeal also reaffirms the precedent that section 580b applies to any purchase money loan regardless of the mode of sale. Opn. at 6, *Id.* at p. 41.

Its conclusions follow all of the applicable cases within the line of anti-deficiency precedent. Its conclusion is narrow, in that it applies only to standard purchase money loans used on residential real estate. The entire opinion is consistent with over sixty years of binding authority, which make purchase money loans non-recourse. The decisions in the line of precedent are uniform, and this opinion merely restates already settled issues of law. The *Coker* opinion was correctly decided, and creates no "confusion" as to the application of section 580b.

This opinion neither conflicts with *Bank of America, N.A. v. Roberts* (2013) 27 Cal.App.4th 1386 (which did not involve either a purchase money loan or § 580b), nor the precedents established under

section 726. Review herein would therefore be wasteful of this Court's time, and would only result in duplicative precedent.

THE COURT OF APPEAL'S OPINION

When the Court of Appeal reversed the trial court's dismissal with prejudice on demurrer of Plaintiff's causes of action for declaratory relief (on the grounds that anti-deficiency protections of Code of Civil Procedure § 580b apply only after a foreclosure), the Court of Appeal first analyzed the plain language of § 580b in light of its twin purposes:

> (1) to "stabilize[] purchase money secured land sales [prices] by [preventing] overvaluing the property"; and (2) ensure "purchasers as a class are harmed less than they might otherwise be during a time of economic decline" because "if property values drop..., the purchaser's loss is limited to the land that he or she used as security in the transaction." Opn. at 10, quoting *DeBerard Properties v. Lim* (1999) 20 Cal.4th 659, 663.

The Court of Appeals made only two decisions:

1. Section 580b does not address a specific mode of sale, but instead focuses on a particular type of loan: the purchase money loan. Opn. p. 11. This is in complete conformity with this Court's prior well-established precedents in *Roseleaf* (at p. 41) and *DeBerard* (at p. 663).

2. The anti-deficiency protections under section 580b cannot be waived. Opn. p. 18. This also is in complete conformity with the precedents established in *DeBerard.* Id at p. 662.

In making these rulings the Court of Appeal found "nothing" in 580b that indicated its protections applies only after certain modes of sale. Opn. at 11. The Court of Appeal observed that courts had consistently held that "foreclosure is not a prerequisite to trigger section 580b's protections." *Id.* The Court's interpretation was consistent with the newly enacted Code of Civil Procedure § 580e, which extended anti-deficiency protections after short sale to any loan, not just purchase money loans. Opn. at 12, and with the understanding of § 580b's protections expressed in the legislative history of § 580e. *Id.*

Finally, the Court of Appeal rejected Chase's argument that the "security first" rule of Code of Civil Procedure § 726a somehow makes § 580b inapplicable after short sale, finding that its argument was "simply another variant of its argument that section 580b only applies after a foreclosure." Opn. at 18. The Court found that *Scalese v. Wong* (2000), 84 Cal.App.4th 863, on which Chase based its arguments, was inapplicable, as it involved judicial proceedings which

were not analogous (Opn. at 16-17), and involved a scenario in which the borrowers had retained their property despite the lender's release of the security, unlike Appellant Coker, who sold her property, with Chase receiving the proceeds of the sale. *Id.* at 17.

THERE IS NO REASON FOR THIS COURT TO GRANT REVIEW

There is no sound rationale for review from this Court. Review by this Court is warranted "[w]hen necessary to secure uniformity of decision or to settle an important question of law." Cal. R. Court. 8500(b)(1). Here there is no threat to the security of the uniform precedents under *Roseleaf Corp.* and *DeBerard*, and its lines of progeny. Further, there is little importance to this question of law, as it is extremely narrow in scope due to the enactment of section 580e (which eliminated deficiencies after short sales completed after July 15, 2011). *Espinoza v. Bank of America* (S.D. Cal. 2011) 823 F.Supp.2d 1053, 1059. Every short sale after the enactment date is protected from deficiency judgment or collection. *Ibid.*

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The *Coker* Decision Is Correctly Decided, and Clearly Distinguishes Cases Involving Narrow Exceptions To Section 580b's Protections

Chase argues that the *Coker* decision creates "confusion" about whether §580b applies when the "creditor's security interest is destroyed" prior to sale. Pet. at 8-10. It does not. The *Coker* decision neatly distinguished those cases on which Chase relies involving the "security first" rule of § 726a.

The remaining cases Chase cites create no conflict or confusion. In *Jack Erickson & Assocs. v. Hesselgesser* (1996) 50 Cal.App.4th 182 the court held § 580b does not apply where parties agree to fundamental changes in the property use and loan (e.g., rebuilding and subordination of the loan to a large construction loan), because in that case, "change in use makes the original security value of the property an unreliable indicator of its value after construction improvement." *id.* at 188 (citations omitted). Under those circumstances, the renovating buyer, not the lender, should bear "the risk of the property not selling for its full appraised value after the renovations," *Id.* at 185-86, and the borrower cannot "extinguish the security interest, sell the property to a third party, and invoke section 580b to shift the loss of the ill-fated project to respondent." *Id.* at 189.

Petitioner's citation to the *Jack Erickson* opinion only puts a spot light on the correctness of the Court of Appeal's opinion in *Coker*. In that opinion, the Second District distinguishes the facts therein from those in *Palm v. Schilling* (1988) 199 Cal.App.3d 63, which is the exact precedent the *Deberard* Court specifically affirmed. The facts in *Jack Erickson* are strongly analogous to *Spangler v. Memel* (1972) 7 Cal.3d 603, and the *Jack Erickson* properly applied the *Spangler* exception therein.

The facts in *Coker* have no similarities to those of *Jack Erickson* or *Spangler*, and it would have been completely inappropriate for the Court of Appeals to apply the *Spangler* exception herein. *Jack Erickson* and *Coker* can and should coexist because they are addressing two very different issues based on diversely differing facts.

The portion of *Deberard* Chase cites holds only that a creditor can avoid the protections of § 580b by destroying "the purchase money nature of the transaction,"[1] – that is, by refinancing. That opinion creates no confusion here. *Goodyear v. Mack*, 159 Cal.App.3d 654, *disapproved on other grounds by DeBerard*, 20 Cal.4th at 671,

[1] Not, as Chase indicates, "by destroying the security" (Pet. at 8). The portion of *Deberard* cited by Chase quotes *Palm v. Schilling* (1988) 199 Cal. App. 3d 63, which states that a creditor can avoid § 580b by "**destroy[ing] the purchase money nature of the transaction** by reconveying the deed or mortgage on the original real estate in exchange for the substitution of other security." 100 Cal.App.3d at 76 (emphasis added), *quoted* in *Deberard*, 20 Cal.4th at 663.

similarly found that § 580b did not apply where an entirely new loan was involved; *Goodyear* in fact involved an entirely new note, secured by different property, and held merely that § 580b "applies only to purchase money debts secured by the property purchased." *Id.* at 659 (citation and emphasis omitted).

The *Deberard* Court affirmed that section 580b could not be waived, except in the "narrow exception" created by *Spangler. Deberard Properties, supra.* at p. 664. As none of the three required elements for the *Spangler* exception are present in this case, section 580b must apply to this single purchase money residential loan. *Id* at p. 666. To this point, the Coker opinion makes no conflicts in the standing precedent.

The Court's interpretation is also in conformity with the *Deberard* Court's interpretation of section 580b. *Deberard Properties, supra* at p. 663 ("The language of section 580b is plain. A vendor is barred from obtaining a deficiency judgment against a purchaser in a purchase money secured land transaction."). Both the plain language of the statute, and the Court's interpretation make note that this particular anti-deficiency protection attaches to the type of loan, not the mode of sale. (*cf* Code of Civ. Proc. § 580d "sold

through power of sale in a deed of trust."). Therefore, no conflict or confusion has been created by this opinion.

Coker Creates No Conflict With *Bank of America, N.A. v. Roberts*

The *Coker* decision does not create a conflict with *Bank of America, N.A. v. Roberts* (2013) 27 Cal.App.4th 1386, because *Roberts* does not speak to any of the issues herein. *Roberts* did not involve either a purchase money loan or § 580b. In *Roberts*, the appellant argued that a home equity line of credit, which the homeowner entered into after purchase, was covered by anti-deficiency laws after short sale The Court of Appeal held only 1) that Code of Civil Procedure 580e, which extended anti-deficiency protections after short sale to refinances and home equity lines of credit like the loan at issue in *Roberts*, did not apply retroactively; 217 Cal.App.4th at 1393-1395; and 2) that the "security first" rule in Code of Civil Procedure § 726a did not bar the lender from pursuing a deficiency, where no other deficiency protections applied, and the security was exhausted.

The analysis of § 726a in *Roberts* has no role where, as in *Coker,* an additional anti-deficiency protection applies (in this case, § 580b, which provides that Ms. Coker's purchase money loans was

non-recourse "in any event"). The reasoning of *Roberts* itself is instructive: if the homeowner's waiver of the security-first rule alone allowed the lender to seek a deficiency, despite other protections, the Court would have had no need to discuss the application of § 580e (or would have held that, in any case, § 580e did not apply because the borrower had asked the lender to waive its security interest). Instead, the Court first examined whether § 580e applied, and only then turned to the security-first rule.

The *Coker* Opinion Provides Sufficient Guidance For Lower Courts

Code of Civil Procedure § 580e, which took effect in 2011, bars deficiency collection after short sale for any loan. Chase argues that in "a significant percentage" of the more than 200,000 short sales which took place in California before § 580e was passed, the borrower promised to remain liable on purchase money debt. Pet. at 16. Be that as it may, the Court of Appeal's well-reasoned opinion (which reached the same conclusion as the sole other published case on the issue, *Rex v. Chase Home Fin., LLC* (C.D. Cal. 2012) 905 F.Supp.2d 111) provides adequate guidance for the parties to those loans, should

disputes arise over collection of alleged deficiencies after short sales before 2011.

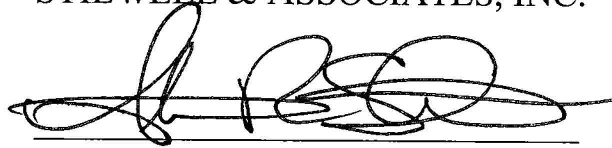
There is no foundation for Chase's argument, *see* Pet. at 17, that "real estate professionals" advising their clients need guidance from the Supreme Court, rather than the Court of Appeal. The Court of Appeal's clear analysis is sufficient guidance for courts and others alike.

CONCLUSION

The Court of Appeal's plain, straightforward opinion was consistent with over sixty years of California law holding that § 580b makes purchase money mortgages non-recourse, from *Roseleaf Corp. v. Chierighino* (1963) 59 Cal.2d 35, which held that purchase money lenders may "look only to the security" and cannot obtain a personal judgment for any deficiency beyond the security, to *Spangler v. Memel* (1972) 7 Cal.3d 603, which held that no foreclosure sale was required to trigger the protections of § 580b, to *DeBerard, supra,* which held that § 580b's protections could not be waived by agreement. The Court should deny review and let the well-reasoned and correct opinion stand.

Dated: September 20, 2013 Respectfully Submitted by,

STILWELL & ASSOCIATES, INC.



ANDREW R. STILWELL, ESQ.
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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rules 8.204, 8.490)

The text of this petition consists of 2,029 words as county by the Microsoft Word 2007 version word-processing program used to generate this petition.

Dated: September 20, 2013

STILWELL & ASSOCIATES, INC.

ANDREW R. STILWELL, ESQ.
Attorney for Appellant

PROOF OF SERVICE
COKER v. JP MORGAN CHASE BANK, N.A., et al
Court of Appeals No.: D061720
San Diego Superior Court Case No: 37-2011-00087958-CU-MC-CTL

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is 3160 Camino Del Rio South, Suite 301, San Diego, CA 92108.

On September 23, 2013, I served the following document described as:

ANSWER TO PETITION FOR REVIEW

by serving a true copy of the above-described document in the following manner:

X	***By U.S. Mail***. I am readily familiar with the office practice of Stilwell & Associates for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Stilwell & Associates personnel responsible for depositing with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid in a sealed envelope

to the parties listed below:

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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 23, 2013, at San Diego, California.

ANDREW STILWELL