

H038420

**IN THE COURT OF APPEAL  
FOR THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT**

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SALMA MERRITT AND DAVID MERRITT

*Plaintiffs-Appellants,*

**-vs-**

COUNTRYWIDE HOME LOANS/BANK OF AMERICA  
ET AL.,

*Defendants-Appellees.*

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APPEAL FROM THE ORDERS ISSUED BY THE SUPERIOR COURT FOR  
THE COUNTY OF SANTA CLARA BEFORE HONORABLE JAMES STOELKER  
Case No. 109-CV-159993

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**OPPOSITION TO MOTION TO DISMISS APPEAL**

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## MEMORANDUM OF POINTS & AUTHORITIES

### I. INTRODUCTION

Plaintiffs comes before this Court in response to Countrywide Defendants motion to dismiss this appeal on the basis that there are appealable orders pursuant to this Court's own *HB Fuller Co. v. Doe*, decision; Collateral Order Doctrine, as well as CCP § 904.1(b) authority to view a notice of appeal as a petition for an extraordinary writ.

Finally, the most significant issue that has enormous *Public Interest* concern is the fact that the Merritts have just uncovered evidence showing that their Superior Court Discovery Judge James Stoelker has previously been employed by two of this Action's Defendants when he was practicing as private lawyer. Namely, American Title and Countrywide Home Loans. See *Declaration of David Merritt*.

This working and financial relationship was not disclosed to the Merritts and they believe that it directly interfered with all of the rulings that judge Stoelker made. At the least, adversely taints the orders now being presented in this appeal.

### II. STATEMENT OF FACTS

Mrs and Mr Merritt were targeted by Countrywide Defendants with Predatory Subprime loans when they qualified for Prime loans. The Defendants performed such on behalf of Defendants Bear Sterns, Bank of America, Wells Fargo and others.

Plaintiffs were directly defrauded out of more than \$200,000, and to date have losses in excess of one-million-dollars (\$1,000,000). *Declaration of David Merritt*.

### **Commencing Federal Action Against Defendants**

The Merritts commenced a Federal Action entitled Merritt v. Countrywide et al 09-1179 in San Jose's Federal District Court, charging, *inter alia*, RICO, TILA and RESPA violations. That case's federal claims were dismissed with instructions to file state action. Nonetheless, the Merritts appealed to the 9<sup>th</sup> Circuit who ordered for appointment of Pro Bono Counsel to take on the appeal and focus on TILA, RESPA and RICO arguments and prepare for Oral Argument. No. 09-17678 (9<sup>th</sup> Cir.) *Ibid*.

The Merritts needed to provide the 9<sup>th</sup> Circuit with information that is exclusively held within the confines of Countrywide Defendants and inaccessible to the Merritts. The information specifically demonstrates the collusion among Angelo Mozilo, David Sambol and other Countrywide Board of Directors among each other, as well as with other officers of Bear Sterns, Wells Fargo, BofA, MERSCORP and others, in planning and implementing plans hatched in 2000, to target Borrowers such as the Merritts with fraudulent loans and other Racketeering and practices. *Ibid*.

### **Principal Purpose Of Seeking Discovery In State Court**

The Merritts commenced the instant action that is before this Court in 2009, and begun to request discovery from Countrywide Defendants in May 2010. These requests were principally to build up the information they needed for supplementing

the 9<sup>th</sup> Circuit Court of Appeals record, because their first choice of forum, with all due respect, was to prosecute the Defendants under the federal jurisdiction of RICO and other Federal Question laws. *Declaration of David Merritt*.

In Superior Court, first the Defendants argued that they did not have an obligation to help the Merritts to make their case against their clients and once this was aired in motion to compel hearings before Judge Monahan in 2010 and early 2011, the argument became “the pleadings have not been settled.” In August 2011, Judge Pierce, overruled demurrers as to fraud and 4 different types of Unfair Business Practices. Now the Defendants wholly rejected providing requested discovery requests based on the premise that the subject matter does not go beyond their own loans, or timeframe of March 2006. *Ibid*.

### **Superior Court Precludes Plaintiffs Access To Evidence**

The Superior Court in 2010, denied the Merritts first motion to compel because they did not clearly record their meet & confer actions and failed to file Separate Statement. *Ibid*.

Twice in 2011, the Superior Court denied the Merritts motions to compel production of documents, again due to Merritts not understanding how to apply the code of procedure, and ultimately because the Superior Court adopted Defendants argument that Discovery should not be permitted beyond the Merritts loans. It refused to compel the e-mails and other communications which shows the Defendants

planning to, and committing, racketeering acts, fraud, conspiracy and other activities.

*Ibid.*

After the 2011 Discovery denials, the Merritts petitioned this Court for Writ and was summarily denied. Filed June 24, 2011, H037048. However, on December 19, 2011, this Court reversed an earlier Superior Court sustaining of Demurrer which defined the subject matter and time frame of the case. Fraud and Conspiracy to Commit Fraud between 2000 and 2006.

The Merritts brought another motion to compel production of documents in 2012 which pointed the Superior Court's attention to this Court's December 19, 2011 reversal, *Merritt v. Wells Fargo et al*, H036259, pp. 28-36, where this Court ruled that the allegations of the complaint encompasses the years 2000 to 2006, and that the it effectively alleged conspiracy formation in 2000 among Wells Fargo, BofA, Countrywide and Doe Defendants which ultimately affected the Merritts. The Superior Court disregarded this Court's findings *ibid.* and on May 23, 2012 it denied the Merritts motion to compel, citing Defendants objections to requests being irrelevant to subject matter and over broad. See Defendants Motion to Dismiss *Exhibit B* last paragraph. The Merritts have no way to obtain the information for the 9<sup>th</sup> Circuit Court of Appeal's other than California State Court since it is the Court of last resort and will not be able to present evidence before it which would reverse the RICO dismissal. *See Declaration of David Merritt.*

### **Superior Court's Order To Divulge Privileged Financial Information**

On February 28 and affirmed May 25, 2012, the Superior Court accepted Defendants motion to compel, which was filed beyond the statutory time limits and objected to be the Merritts; failed to enforce meet & confer principles; and disregarded the Merritts California privacy rights and their objections to Defendants attempts to ascertain financial and other personal privileged information and ordered the Merritts to provide Defendants with such information.

Providing Defendants the broad financial and personal information they requested, and to which the Superior Court compelled production of, would, in a manner of speaking, be akin to releasing an Arrow from a Bow which could never be recalled or its consequences rectified.

### **Petition For Writ**

On June 8 2012, The Merritts petitioned this Court for Writ in case number H038400 which this Court summarily denied on July 3, 2012, and they filed Supreme Court Petition for Review which was denied August 15, 2012.

### **Notice of Appeal**

On June 14, 2012, after learning that the facts of this case fell under Collateral Order Doctrine as well as *HB Fuller Co. v. Doe*, 60 Cal. Rptr.3d 501, the Merritts filed a direct notice of appeal.

### III. ARGUMENT & AUTHORITIES

#### a. **This Appeal's Issues Are Appealable Because They Are Ancillary To The Merritts Action Pending In Another Jurisdiction**

The defendants' assertion that this Court does not actually have jurisdiction over this appeal does not take into account this Court's ruling which mandated that:

Generally, discovery orders are not appealable. ([\*Warford v. Medeiros\* \(1984\) 160 Cal.App.3d 1035, 1040.](#)) That *generalization is inapplicable, however*, where the order is *ancillary* to litigation in **another jurisdiction** and operates *as the last word by a California trial court* on the matters at issue. (*Id.* at pp. 1040-1041.)

*Fuller Company v. Doe* (2007) 60 Cal.Rptr.3d 501, 505. Emphases Appellants.

There is no question that the Merritts Federal Action is in "another jurisdiction" and is in an ancillary position. The *Fuller* case does not require for the case to be in another demographic location, but simply another jurisdiction.

The information/discovery being sought by the Merritts would of course assist them in prosecuting their state claims in Superior Court. However, the main purpose of bringing their state claims was to open the door to information that Countrywide has in order to provide this information to the Federal Jurisdiction. Once the Ninth Circuit rules on the appeal, and if they do so *without* the information that the California court is blocking the Merritts from securing, the effect will be that the California courts had the final word on the Merritts Federal Jurisdictional claims.

**b. Additional Appealability Exist Based Upon Collateral Doctrine Order**

Collateral Order Doctrine means, in part, that an order would be effectively unreviewable on final appeal and essentially that the rights asserted would be lost. See *Richardson-Merrell, Inc. v. Koller*, 472 US 424, 86 L.Ed.2d 340 (1985).

Those orders “which determine *important rights* ... but which *are not* related to the cause of action presented, are appealable under the ‘collateral order doctrine,’ even though such orders do *not conclude* the case.... The collateral order doctrine is best understood not as an exception to the final decision rule laid down in the statute... but as a practical construction of the rule.” *Am Jur.2d* §105 (2007) and all authorities therein. Emphases Appellants.

The Superior Court’s wholesale denial of the Merritts rights to protect financial and personal information stemming from the 1980s and nearly a decade worth of financial information, abrogates their Constitutional right to privacy, which has nothing at all to do with this case’s causes of action.

Ordering the Merritts to make public intimate financial and doctor-patient information is a final order which, if not corrected, will not be reviewable on appeal since the damage to their privacy rights would disclose to public things that should be protected and the damage will be totally irreversible.

“[A]n interim order is appealable if: 1. The order is collateral to the subject matter of the litigation, 2. The order is final as to the collateral matter, and 3. The

order directs the payment of money by the appellant or the performance of an act by or against appellant.” *Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4<sup>th</sup> 289, 297-98 and *Sjoberg v. Hastorf* (1948) 33 Cal.2d 116, 119.

**c. Orders of \$4,000 In Sanctions Reviewable Under § 904.1(b)**

As this Court knows, it has statutory authority to accept this appeal and review it under petition for extraordinary writ. Previously Collateral Order Doctrine dealt with all dollar amounts, but in 1993 the legislature raised the dollar amount to \$5,000. This of course only assessed what \$5,000 would mean to a firm, but not *pro pers* who are on fixed or limited income. Nonetheless, the sanctions that Superior Court imposed in this case is reviewable by this Court.

**d. Judge Stoelker’s Failure To Disclose Over Decade’s Long Employment With Defendant First American Title & Over 3 Years With Principle Defendants Countrywide Home Loans & Countrywide Financial**

The Declaration of David Merritt contains the Statement for Disqualification of Judge Stoelker, dated August 17, 2012. On August 17, 2012, the Merritts appeared in Superior Court to contest yet another adverse Tentative ruling by Judge Stoelker after being physically and emotionally abused severely by Countrywide Counsel James Goldberg. Being that such rulings were so consistent, this lead to an intense investigation on Stoelker’s past which produced evidence that he was hired by

Countrywide Home Loans—Defended them in civil actions—and prosecuted cases for American Title Company. *Declaration of David Merritt*.

Judge Stoelker never disclosed this to the Merritts and at the August 17, 2012 hearing he was planning to ban all citizens from every deposition of the Merritts and grant authority to Countrywide Defendants to conduct depositions *ad infinitum*.

More than a dozen local politically active persons and some reporters attended the hearing on August 17, 2012 and this lead to Stoelker's conflict of interest becoming international news. See *Declaration of David Merritt*.

The Merritts are being denied access to direct and indirect evidence held exclusively by Defendants, with the support of the Superior Court. Whether the Superior Court is taking Countrywide Defendants side because of past or some unknown current relationship is unimportant since whatever is causing this can only be stopped by this Court.

#### IV. CONCLUSION

The Plaintiffs do not have any other jurisdiction to obtain this information from and California State Court will have the final word on this issue now on appeal. Additionally, the Merritts privacy rights will be irreparably damaged and abrogated if this Court does not review and correct the order to disclose privileged information and of course if the Court does find that the Superior Court abused its discretion or

otherwise committed reversible error the order to pay attorney fees should be correspondingly nullified.

Respectfully submitted,

Dated: August 24, 2012



-David Merritt

**CERTIFICATE OF SERVICE**

I, Ronald Merritt, hereby certify that I placed a true copy of:

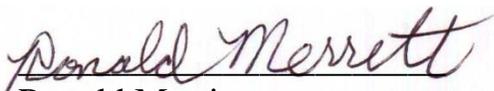
OPPOSITION TO MOTION TO DISMISS APPEAL

in first class postage envelop addressed to:

James Goldberg, 333 Market Street 25<sup>th</sup> floor, San Francisco, Ca 94104

and, copy to Superior Court 191 N. First st. San Jose, CA

Within first class postage affixed thereto, and placed said envelop in US Post office mails on this 24 day of August 2012.



Ronald Merritt  
2767 Kesey Lane,  
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I David Merritt electronically served copy of herein to California Supreme Court on this 24, day of August 2012.