

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

BEFORE THE HONORABLE FRANK ROESCH, JUDGE - DEPT. 17

RENEE SHIZUE RAMOS, AKA RENEE  
SHIZUE YAMAGISHI,

**CERTIFIED  
TRANSCRIPT**

Plaintiffs,

vs.

Case No. 23CV029813

WILMINGTON TRUST NATIONAL  
ASSOCIATION, SUCCESSOR TRUSTEE  
TO CITI BANK, N.A., AS TRUSTEE  
FOR MERRILL LYNCH MORTGAGE  
INVESTORS TRUST, MORTGAGE LOAN  
ASSET-BACKED CERTIFICATES, AND  
SERIES 2006-HES, a business  
entity form unknown, et al.,

Respondent.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Via Zoom)

May 15, 2023

APPEARANCES:

For the Plaintiffs:                   STEPHEN F. LOPEZ, ESQ.

For the Defendant                   PAMELA JACKSON, ESQ.  
Breckenridge:                        ELAINE SOONG, ESQ.

Court Reporter:                      Lisa McMillan, CSR #10383

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(Via Zoom)

May 15, 2023

AFTERNOON SESSION

P R O C E E D I N G S

THE COURT: This is the case of Ramos versus  
Wilmington Trust National Association, et al.

If I could ask counsel to state their  
appearances for the record, we will start with you,  
Mr. Lopez.

MR. LOPEZ: Good afternoon, Your Honor.  
Stephen Lopez for plaintiff.

MS. JACKSON: Good afternoon, Your Honor.  
Pamela Jackson for Breckenridge Property Fund.

We are just making a special appearance for  
this hearing only, as we have not appeared in the action  
yet. We were just served on Friday.

THE COURT: All right.

MS. SOONG: Elaine Soong also for Breckenridge  
Property Fund 2016, LLC, specially appearing.

THE COURT: Okay. I have an opposition here.  
Did you not file your opposition, Ms. Jackson,  
you just delivered it to the court this afternoon?

MS. JACKSON: I did send it in via the portal  
for e-filing, so it should be there through One Legal.

THE COURT: All right. That's probably a  
general appearance.



1 MS. JACKSON: It's always difficult in these  
2 matters when we haven't actually had a chance to look at  
3 the actual complaint.

4 THE COURT: All right. Let me read the  
5 opposition here.

6 (Pause in proceedings.)

7

8 THE COURT: Okay. I have read the opposition.

9 Mr. Lopez, what is it that you are seeking in  
10 your ex parte application?

11 MR. LOPEZ: Well, for now, Your Honor, a  
12 temporary restraining order, restraining only the  
13 eviction of my client from the property. Obviously, we  
14 would have to set a hearing for an order to show cause  
15 re: Preliminary injunction, where obviously the Court  
16 would have a further opportunity to explore the issues.

17 I did look at the opposition, and I think the  
18 opposition -- and I understand that they have just seen  
19 this, so they misunderstand what this complaint is  
20 about. It has nothing to do with any prior litigation.  
21 The day of the sale, my client tendered the payoff on  
22 the loan. They refused to accept it. That had not even  
23 occurred --

24 THE COURT: Who is "they"?

25 MR. LOPEZ: The seller, who is the beneficiary,  
26 Wilmington did that, Your Honor.

27 THE COURT: All right.

28 MR. LOPEZ: Okay. So my client did also go to



1 the sale and inform -- and this is in her declaration --  
2 inform the representative of Breckenridge of the sale,  
3 that, in fact, she had tendered the full amount and was  
4 going to pay off the loan.

5 They decided to go through with this sale  
6 anyway, so it's not they're an innocent party here.  
7 They knew about this.

8 I understand that it's a complex issue, but I  
9 think my client is definitely going to win this  
10 litigation, and the result is this foreclosure is going  
11 to be found to be wrongful.

12 And there is a case right on point that I have  
13 cited for the Court that sets out why this sale is, in  
14 fact, wrongful, that they cannot refuse the tender, and  
15 they must accept the tender and stop the sale. They  
16 didn't do that.

17 And secondly, my client, obviously, would be  
18 severely harmed and damaged by being removed from her  
19 property.

20 THE COURT: What kind of a property is it?

21 MR. LOPEZ: It's a single-family residence.  
22 It's her family's home. They have owned it since 1965.

23 THE COURT: All right. Is there anything else  
24 you would like to add?

25 MR. LOPEZ: Nothing to add, Your Honor.

26 THE COURT: Ms. Jackson, do you wish to make  
27 argument?

28 MS. JACKSON: Thank you, Your Honor.



1 I think we have pointed out very clearly to the  
2 Court that this matter has been litigated in the  
3 unlawful detainer case. It was fully litigated. The  
4 issue that's raised by the defendant -- by the plaintiff  
5 in this case was heard by Judge McKinney. And Judge  
6 McKinney made it very clear in his order that granting  
7 summary judgment, that that was not sufficient to take  
8 title away from my client who purchased the property and  
9 was found to be a bona fide purchaser for value, without  
10 notice, and then got a judgment for possession.

11 This case has been going on since 2019. And  
12 the particular case for -- as I said, foreclosure, could  
13 have been brought at any time. The defendant -- or  
14 sorry. I keep calling her "defendant," because I'm in  
15 unlawful detainer mode.

16 THE COURT: Was the foreclosure sale in 2019?

17 MS. JACKSON: Yes, Your Honor. It was in  
18 September of 2019. And we have gone all this time. We  
19 have gone through COVID. We have gone through an  
20 appellate process. We have gone through a claim of  
21 right to possession where that particular claimant  
22 admitted in court that he continued to pay rent to  
23 Ms. Ramos, when he should have been paying to my client.  
24 My client has not received one red cent since they  
25 purchased the property in 2019.

26 And there is also -- I'll make a representation  
27 to the Court, there is an order from one of the five  
28 prior proceedings in both the district court and the



1 state court that Ms. Ramos had not paid since 2008.  
2 Therefore, I just believe that this case has been  
3 disposed of. It's been on appeal. The appeal is final.  
4 It has been adjudicated. My client is entitled to  
5 possession. Ms. Ramos is free to go after the lender  
6 for her damages under the Homeowner Bill of Rights, as  
7 pointed out by Judge McKinney, but that is under a  
8 different section, and it does not involve my client at  
9 all. My client is entitled to res judicata as to that  
10 effect.

11 So we would ask that the Court dissolve this.  
12 The lockout is this week, and we would like to go  
13 forward with it.

14 THE COURT: So you have obtained a writ of  
15 execution from the sheriff's department, and the sheriff  
16 is scheduled to appear tomorrow to evict the plaintiff  
17 here?

18 MS. JACKSON: Yes, just the plaintiff, not the  
19 claimant. The claimant is not being evicted, only the  
20 named defendants in the unlawful detainer case.

21 THE COURT: Who is being evicted? I didn't  
22 quite understand that.

23 MS. JACKSON: Well, Ms. Ramos as put a tenant  
24 in the property, and that tenant claimed the right to  
25 possession in the unlawful detainer case. And the judge  
26 in that case, I think it was Judge Kolakowski,  
27 determined that he was a bona fide tenant, and he would  
28 get to stay. So the writ is not as to him. He will get



1 to stay as a tenant. However, Ms. Ramos must move.

2 THE COURT: Okay. So are you saying that -- if  
3 the sheriff -- that's a rather unusual situation. The  
4 sheriff escorts Ms. Ramos to the door and says you will  
5 have to leave. She leaves, walks around the block. The  
6 sheriff leaves, and the tenant is entitled to let her  
7 back into possession.

8 MS. JACKSON: Well, he is not entitled to do  
9 that. He might do that, in which case we would probably  
10 have a different action against the tenant.

11 THE COURT: Why wouldn't he be entitled to do  
12 that if he has the right to possession?

13 MS. JACKSON: Well, he has possession of one  
14 room, not the entire property. He is a renter of a  
15 room.

16 THE COURT: Well, the way it works in Berkeley  
17 is if you rent a room, you also rent the front room and  
18 the kitchen and the bathroom.

19 MS. JACKSON: That could be. But the sheriff  
20 has assured us that this will happen.

21 And we'll make sure that the claimant has a  
22 key. If he chooses to let Ms. Ramos back in, that's at  
23 his peril.

24 THE COURT: Okay.

25 MS. JACKSON: But with him staying there,  
26 Ms. Ramos has had, essentially, a stay pending appeal  
27 without having to pay a cent.

28 THE COURT: All right. Is that your argument,



1 Ms. Jackson?

2 MS. JACKSON: Yes, Your Honor. Thank you.

3 THE COURT: Mr. Lopez?

4 MR. LOPEZ: Your Honor, we have done this this  
5 way even though the Court has spoken exactly to the  
6 situation, that the tenant has every right to let  
7 Ms. Ramos back into this property. That's not the way  
8 we want to do that. The lease doesn't say that he's the  
9 only person who can live there. And so that could be  
10 done.

11 But I want to do this the proper way, and I  
12 want to make sure the Court gets to consider it.  
13 Counsel is wrong, there is no HBOR claim in this case.  
14 There is no Homeowner Bill of Rights issue in this case.  
15 This is purely about what they did on the day of the  
16 sale, and nothing else. None of it was ever litigated  
17 before.

18 In the unlawful detainer, that issue was never  
19 litigated, nor could it be, as this Court, I'm sure is  
20 aware and has heard a million times, unlawful detainer  
21 courts don't litigate title. And that is what's at  
22 issue in this case is title. There's a quiet title  
23 action against Breckenridge and Champery also. So title  
24 is at issue. This is the proper form.

25 As far as it being timely, it was filed within  
26 the statute of limitations. I'm not sure how you say  
27 they have suffered laches as a result of that. It is  
28 within the statute of limitations.





1           We just would like -- at this point in time, I  
2 know that it's going to be hard for the Court to delve  
3 in this; issue a TRO, set an order to show cause, and  
4 let's see what's appropriate in terms of a preliminary  
5 injunction, if anything, and what, if any, bond or rent  
6 is to be paid, if anything.

7           Obviously any damages they are incurring in  
8 terms of rent could be remediated by paying that rent.

9           THE COURT: Well, is this the same action as  
10 the quiet title action that you just --

11           MR. LOPEZ: Yes, Your Honor. That's the action  
12 we're talking about right now, is the wrongful  
13 foreclosure and quiet title action.

14           THE COURT: All right. It includes a quiet  
15 title action?

16           MR. LOPEZ: It does, Your Honor.

17           THE COURT: Okay.

18           MS. JACKSON: Your Honor, if I may, to the  
19 extent that title is litigated, it was litigated in the  
20 unlawful detainer case. Ms. Ramos filed over 100 pages  
21 of opposition to the summary judgment motion, and you  
22 can see the Court made a very solid ruling and in-depth  
23 ruling on that.

24           THE COURT: How do you litigate title in a  
25 summary proceeding?

26           MS. JACKSON: Well, there are limited issues  
27 that are raised in title, and those can be raised by the  
28 defendant in an unlawful detainer case. And once we



1 have been found to be the bona fide purchaser, I don't  
2 know that there's any way you will be able to overcome  
3 that. My client is entitled to possession, and has been  
4 entitled to possession now for over two years.

5 THE COURT: All right. Well, taking into  
6 consideration that a temporary restraining order will  
7 stop the sheriff from coming tomorrow, that may not stop  
8 the sheriff from coming after a preliminary injunction  
9 hearing, that they'll just put it on hold. And  
10 particularly if you have been waiting for two years,  
11 putting it over for two or three weeks to have a  
12 preliminary injunction hearing, if you balance out the  
13 equities, that's probably the most equitable thing to do  
14 under the circumstances. And I'm prepared to do that.

15 Do you have a motion for a preliminary  
16 injunction, Mr. Lopez?

17 MR. LOPEZ: I did not file separate papers. I  
18 have done this before, Your Honor. I usually rely on  
19 the TRO. But I would be happy to file separate papers  
20 with the Court and give them an opportunity to respond  
21 and then I could reply.

22 Otherwise, I would be willing to submit on the  
23 papers that I have already submitted, Your Honor. I'll  
24 have them do an opposition and give me an opportunity to  
25 reply.

26 THE COURT: I'm going to grant the temporary  
27 restraining order.

28 MR. LOPEZ: Understood.



1 THE COURT: If I'm looking at the calendar, we  
2 can schedule this on June the 8th for a preliminary  
3 injunction hearing.

4 MR. LOPEZ: The order that I submitted, Your  
5 Honor, has --

6 THE COURT: Let me take a look at it.

7 MR. LOPEZ: Okay.

8 THE COURT: Ms. Jackson, how much time do you  
9 need to file opposition papers?

10 MS. JACKSON: I think that would be directed to  
11 Ms. Soong, because she will be filing them.

12 THE COURT: All right. Ms. Soong?

13 MS. ELAINE SOONG: We can probably get it done  
14 in ten days.

15 THE COURT: All right. How about, you can have  
16 until the 26th of May. You will be required to serve by  
17 electronic service.

18 If you want to file any reply papers,  
19 Mr. Lopez, you can do so by June the 1st.

20 MR. LOPEZ: That would be fine, Your Honor.

21 THE COURT: All the papers amongst the parties  
22 need to be served electronically. The Court requires a  
23 courtesy copy delivered to the Court concurrently with  
24 the filing.

25 MS. JACKSON: Your Honor, will the Court  
26 condition this on the payment of the daily rental value  
27 into the Court, which is deemed to be \$145.35 a day?

28 THE COURT: I won't do that for the TRO, but I



1 certainly will do something along those lines.

2 My preference is that the payment be made  
3 directly to the other side rather than going through  
4 court. And I'm not sure whether we need to have a bond  
5 of a large amount or we have to have a payment of a  
6 monthly amount. Under the circumstances of this case,  
7 you all can argue what would be best or what would be  
8 most appropriate at the time of the preliminary  
9 injunction hearing. But for the next three weeks, I'm  
10 not going to make any bond requirement.

11 I will sign the order. I have to fix up the  
12 order that you have given me, Mr. Lopez.

13 MR. LOPEZ: And that's fine, Your Honor. It's  
14 the proposal.

15 THE COURT: I'm not trying to be critical. I'm  
16 just telling you it's not going to be online in another  
17 half-hour or hour.

18 And Ms. Jackson, I'm going to put the burden on  
19 you to notify the sheriff, so that given whether you  
20 have a copy of this order in your hand or not, that the  
21 sheriff knows that they don't need to drive out there  
22 tomorrow.

23 MS. JACKSON: Certainly, Your Honor.

24 MR. LOPEZ: All right. Thank you very much,  
25 Your Honor.

26 THE COURT: With that, court is adjourned.  
27 Thank you.

28 MS. JACKSON: Thank you.



1 MR. LOPEZ: Thank you.  
2 (Proceedings adjourned.)  
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CERTIFICATION

I, LISA M. McMILLAN, a Certified Shorthand Reporter, License No. 10383, in and for the State of California, do hereby certify:

That said proceedings were taken down by me in shorthand at the time and place therein named and were thereafter transcribed by means of computer-aided transcription; and the same is a true, correct and complete transcript of said proceedings.

I further certify that I am not of counsel or attorney for any of the parties hereto, or in any way interested in the events of this cause, and that I am not related to any party hereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of May 2023.



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Certified Shorthand Reporter



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