

Case No. S243294

SUPREME COURT
FILED

APR 25 2018

SUPREME COURT OF CALIFORNIA

Jorge Navarrete Clerk

BLACK SKY CAPITAL, LLC,
Plaintiff and Appellant,

Deputy

v.

MICHAEL A. COBB and KATHLEEN S. COBB,
Defendants and Petitioners.

After a Decision by the Court of Appeal,
Fourth Appellate District Two
Case No. E064482

From the Superior Court of California, County of San Bernardino
The Hon. Bryan F. Foster, Judge
Case No. CIVDS1416584

***AMICUS CURIAE BRIEF OF HOUSING AND ECONOMIC
RIGHTS ADVOCATES IN SUPPORT OF DEFENDANTS AND
PETITIONERS MICHAEL A. COBB AND KATHLEEN S.
COBB***

Arthur D. Levy (SBN 95659)
Noah Zinner (SBN 247581)
Housing and Economic Rights Advocates
1814 Franklin Street, Suite 1040
Oakland, CA 94612
Email: arthur@yesquire.com
Telephone: (415) 702-4551
Facsimile: (415) 814-4080
Email: nzinner@heraca.org
Telephone: (510) 271-8443
Facsimile: (510) 280-2548

Counsel for Amici Curiae,
Housing and Economic Rights Advocates

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTRODUCTION	1
ARGUMENT.....	4
1. California’s Anti-Deficiency Legislation: History, Purposes, and Policy	4
2. This Court Should Approve the Heretofore Unquestioned Rule of <i>Simon</i> , that Section 580d Applies to a Second Mortgage When the Foreclosing Lender Holds Both First and Second Mortgages at the Time of a Non-Judicial Foreclosure.	11
a. Applying Section 580d to Black Sky’s Second Mortgage Is Consistent with <i>Roseleaf</i> and Necessary to Eliminate the Potential for a Double Recovery from the Cobbs.	11
b. The Language of Section 580d Allows Applying the Statute to Black Sky’s Second.	15
c. The Appellate Case Law Unanimously Supports this Construction of Section 580d.	23
d. Black Sky’s Other Arguments Are Without Merit.	25
3. Section 580d Applies When a Single Lender Simultaneously Originates Both First and Second Mortgages Secured by the Same Property, and the First is Later Non-Judicially Foreclosed.	30
CONCLUSION.....	49

TABLE OF AUTHORITIES

California Cases

<i>Alliance Mortgage Co. v. Rothwell</i> (1995) 10 Cal.4th 1226, 1236.....	passim
<i>BFP v. Resolution Trust Corp.</i> (1994) 511 U.S. 531.....	11, 32
<i>Brown v. Jensen</i> (1953) 41 Cal.2d 193	27, 28
<i>Cadlerock Joint Venture, L.P. v. Lobel</i> (2012) 206 Cal.App.4th 1531	passim
<i>Cerra v. Blackstone</i> (1985) 172 Cal.App.3d 604	51
<i>Coker v. JPMorgan Chase Bank, N.A</i> (2016) 62 Cal.4th 667	passim
<i>Commonwealth Mortgage Assurance Co. v. Superior Court</i> (1989) 211 Cal.App.3d 508	15
<i>Cornelison v. Kornbluth</i> (1975) 15 Cal.3d 590	passim
<i>DeBerard Properties v. Lim</i> (1999) 20 Cal.4th 659	15
<i>Freedland v. Greco,</i> (1955) 45 Cal.2d 462	passim
<i>Juarez v. Arcadia Financial, Ltd.</i> (2007) 152 Cal. App.4th 889	51
<i>Lungren v. Deukmejian</i> (1988) 45 Cal.3d 727	22, 23
<i>Palm v. Schilling,</i> (1988) 199 Cal.App.3d 63	15

<i>People v. Hacker Emporium, Inc.</i> (1971) 15 Cal.App.3d 474	50
<i>People v. Pieters</i> (1991) 52 Cal.3d 894	23, 25, 47
<i>Prunty v. Bank of America</i> (1974) 37 Cal.App.3d 430	16
<i>Roseleaf Corp. v. Chierighino</i> (1963) 59 Cal.2d 35	passim
<i>Simon v. Superior Court</i> (1992) 4 Cal.App.4th 63	passim
<i>Yvanova v. New Century Mortg. Corp.</i> (2016) 62 Cal.4th 919	37
California Statutes	
Bus. & Prof. Code, § 17536.....	50
Civ. Proc. Code § 580b.....	passim
Civ. Proc. Code § 580d.....	passim
Civ. Proc. Code §§ 726 and 580a	9
Penal Code §§ 1170	23
Other Authorities	
C. Bruck, <i>Angelo’s Ashes: The Man Who Became the Face of the Financial Crisis</i> , <i>The New Yorker</i> (March 20, 2018).....	43
Federal Housing Finance Agency Office of Policy Analysis and Research, Working Paper 14-3,.....	43
Federal Reserve Board, <i>The U.S. Housing Market: Current Conditions and Policy Considerations</i> (2012)	44

Hetland & Hansen, *The “Mixed Collateral” Amendments to California's Commercial Code*
(1987) 75 Cal. L.Rev. 185 7

National Comm. on the Causes of the Financial and Economic Crisis
in the United States, *The Financial Crisis Inquiry Report* (2011)
..... passim

Riesenfeld, *California Legislation Curbing Deficiency Judgments*
(1960) 48 Cal. L.Rev. 705 16

Sheneman, *Cal. Foreclosure: Law and Practice* (1994)..... 34

INTRODUCTION

For most Americans, buying a home is by far the largest and most significant investment of a lifetime. As property values in California, especially in our metropolitan population centers, continue to rise, homebuyers face costs and risks more daunting than ever before. For this Court to have taken the rare step to review an anti-deficiency case is timely.

Downturns in the real estate market have a ripple effect, not only within the housing market itself, but on the overall economy as well. Falling home values trigger increased rates of foreclosure, which in turn accelerate a downward spiral in home values as lenders increase their inventories of homes purchased at foreclosure sales. Homeowners in a depressed market find their homes “under water” and are unable to refinance or sell their way out of unaffordable mortgages. The human toll of lost homes is incalculable. The financial toll on the housing market and on the economy as a whole can be severe, as purchasing power diminishes, expenditures on home improvements and furnishings dissipate, and lending, brokerage, construction, and architectural business contracts.

The California Legislature witnessed this systemic economic syndrome during the Great Depression, and responded 85 years ago by enacting anti-deficiency statutes. These statutes came on the books as the result of “the Great Depression and the corresponding

legislative abhorrence of the all too common foreclosures and forfeitures [which occurred] during that era for reasons beyond the control of the debtors.” (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1236, quoting Hetland & Hansen, *The “Mixed Collateral” Amendments to California’s Commercial Code* (1987) 75 Cal. L.Rev. 185, 187-188, fn. omitted.)

The anti-deficiency statutes continue to serve as a bulwark of protection for borrowers and the economy in general against “bubble markets” like California experienced during the 1920s and the early 2000s. Recent history has again proven that the residential real estate market is prone to booms and busts. In the past decade California experienced the most widespread financial catastrophe since the Great Depression, the era in which the State’s anti-deficiency regime was urgently enacted. It is widely documented that this most recent housing meltdown was driven by modern mortgage lending practices that evaded consumer and market protections, at the expense of borrowers and the security of the housing market.

This case presents two significant issues under Code of Civil Procedure section 580d:

First, does the statute bar a deficiency on a second mortgage when the lender forecloses the first mortgage at a non-judicial sale and the same lender also owns the second mortgage at the time of sale? The Courts of Appeal, following *Simon v. Superior Court*

(1992) 4 Cal.App.4th 63, have uniformly and without exception held that it does. This Court should approve those decisions and hold that section 580d bars Blue Sky's action to obtain a personal judgment against the Cobbs based on the second mortgage.

Second, does the statute bar a deficiency on a second mortgage when the first mortgage is foreclosed at a non-judicial sale and, even if there is not common ownership of both loans at the time of the foreclosure sale, a single lender simultaneously originated both loans? This is the second aspect of *Simon*, in which the court presciently foresaw the danger of "piggyback" lending to the anti-deficiency laws. This issue came to be of prime importance to homeowners because of the prevalence of piggyback lending during the recent mortgage bubble—the simultaneous origination of a large first mortgage, together with a smaller piggyback second mortgage in order to achieve a loan-to-value ratio on the first (usually 80%) that would satisfy the requirements to securitize the first.

After *Simon*, the housing market crash of ten years ago compellingly revealed the hazards of piggyback lending. Piggyback seconds threaten homeowners with personal liability on junior loans that lenders structured simply to enable them to sell first mortgages into the market for mortgage-backed securities. This Court should approve this second aspect of *Simon* and hold that section 580d bars a

deficiency not only on a first loan that is non-judicially foreclosed, but also on a simultaneously originated junior mortgage.

ARGUMENT

1. California's Anti-Deficiency Legislation: History, Purposes, and Policy

Since the Great Depression, California's anti-deficiency statutes have protected borrowers against "deficiency judgments" after a mortgage lender has exhausted the loan security, ordinarily through a foreclosure sale or a short sale. "A deficiency judgment is a personal judgment against the debtor-mortgagor for the difference between the fair market value of the property held as security and the outstanding indebtedness." (*Cornelison v. Kornbluth* (1975) 15 Cal.3d 590, 603.)

California's anti-deficiency legislation consists of two "fair value" statutes (Code of Civil Procedure §§ 726 and 580a¹), the "purchase money" anti-deficiency law (section 580b), and the statute at the heart of this case, section 580d. For reasons that will be explained, section 580d is best classified with the "fair value" statutes. This cluster of anti-deficiency laws, enacted between 1933 and 1940, serves different, but overlapping, purposes.

The "fair value" statutes limit any deficiency judgment to the amount by which the loan balance remaining after the security has

¹ Unless other stated or indicated by context, all citations are to the Code of Civil Procedure.

been exhausted exceeds the fair market value of the property, regardless of the price actually paid at a foreclosure sale.²

The price at a foreclosure sale is not deemed the equivalent of the property's fair market value. As the United States Supreme Court recently observed, "An appraiser's reconstruction of 'fair market value' could show what similar property would be worth if it did not have to be sold within the time and manner strictures of state-prescribed foreclosure. But property that *must* be sold within those strictures is simply *worth less*. No one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques."

(*Alliance Mortgage*, 10 Cal.4th at 1236-37, quoting *BFP v.*

² § 580a ("The court may render judgment [after a non-judicial foreclosure sale] for not more than the amount by which the entire amount of the indebtedness due at the time of sale exceeded the fair market value of the real property or interest therein sold at the time of sale with interest thereon from the date of the sale"; added by Stats. 1933, ch. 642, § 4); § 726, subd. (b) ("the court shall render a money judgment [in a judicial foreclosure action] against the defendant or defendants for the amount by which the amount of the indebtedness with interest and costs of levy and sale and of action exceeds the fair value of the real property or estate for years therein sold as of the date of sale"; originally added by Stats. 1937, ch. 353, § 1).

Resolution Trust Corp. (1994) 511 U.S. 531, 539, italics in original.)

In contrast, the purchase money anti-deficiency law entirely eliminates a borrower's personal liability on any mortgage used to purchase a dwelling the borrower intends to occupy.³

The last-enacted anti-deficiency statute, section 580d, bars deficiency judgments altogether when the lender conducts a non-judicial foreclosure.⁴ By prohibiting deficiencies after a non-judicial foreclosure sale, section 580d provides even stronger anti-deficiency protection than the earlier section 580a, which permitted deficiencies after non-judicial foreclosure sales, but imposed a "fair value"

³ § 580b (originally added by Stats. 1933, ch. 642). The original legislation only applied to installment purchases and seller carry-back mortgages. In 1963, the Legislature expanded the coverage of the statute to conventional mortgages used to buy personal residences. (*Id.*, subd. (a)(3)) ("no deficiency shall be owed or collected, and no deficiency judgment shall lie ... [u]nder a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan that was used to pay all or part of the purchase price of that dwelling, occupied entirely or in part by the purchaser"); originally added by Stats. 1963, ch. 2158, § 1.)

⁴ § 580d, subdivision (a) ("no deficiency shall be owed or collected, and no deficiency judgment shall be rendered for a deficiency on a note secured by a deed of trust or mortgage on real property or an estate for years therein executed in any case in which the real property or estate for years therein has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust"; originally added by Stats. 1940 1st Ex. Sess., ch. 29, § 2.)

limitation on the judgment amount. As will be explained, the Legislature's reason for adding section 580d was to increase protection against "double recovery."

The evil that led to Legislature to add the "fair value" statutes was the potential for a lender to obtain a double recovery from the borrower. "[D]uring the great depression with its dearth of money and declining property values, a mortgagee was able to purchase the subject real property at the foreclosure sale at a depressed price far below its normal fair market value and thereafter to obtain a double recovery by holding the debtor for a large deficiency." (*Cornelison, supra*, 15 Cal.3d at 600, citing *Roseleaf Corp. v. Chierighino* (1963) 59 Cal.2d 35, 40; *see also Alliance Mortgage, supra*, 10 Cal.4th at 1236 ("the antideficiency statutes in part 'serve to prevent creditors in private sales from buying in at deflated prices and realizing double recoveries by holding debtors for large deficiencies.'"))

The enactment of section 580a in 1933 and section 726 in 1937 imposed the "fair value" limitation on any deficiency judgment sought by a foreclosing mortgage lender after either a non-judicial foreclosure sale or a judicial foreclosure sale, respectively. Under the "fair value" statutes, "if, due to the depressed economic conditions, the property serving as security was sold for less than the fair value as determined under section 726 or section 580a, the mortgagee could

not recover the amount of that difference in his action for a deficiency judgment. “ (*Cornelison, supra*, 15 Cal.3d at 601.)

However, “one significant difference [between non-judicial and judicial sales] remained, namely property sold through judicial foreclosure was subject to the statutory right of redemption (§ 725a [now § 726, subd. (e)]), while property sold by private foreclosure sale was not redeemable.” (*Cornelison, supra*, 15 Cal.3d at 602.) The effect of the borrower’s right to redeem the property at the judicial foreclosure sale price for a year after a judicial foreclosure sale⁵ “was to remove any incentive on the part of the mortgagee to enter a low bid at the sale (since the property could be redeemed for that amount) and to encourage the making of a bid approximating the fair market value of the security.” (*Id.* at 590, 602 .) Because there is no statutory redemption right after a non-judicial foreclosure sale, after a trustee’s sale the lender “could gain irredeemable title to the property by a bid substantially below the fair value and still collect a deficiency judgment for the difference between the fair value of the security and the outstanding indebtedness.” (*Ibid.*)

The Legislature added section 580d in 1940 to put non-judicial foreclosure sales on a “parity” with judicial foreclosure sales:

⁵ § 726, subd. (e); § 729.030, subd. (b); § 729.060, subd. (b).

It seems clear . . . that section 580d was enacted to put judicial enforcement on a parity with private enforcement. This result could be accomplished by giving the debtor a right to redeem after a sale under the power. *The right to redeem, like proscription of a deficiency judgment, has the effect of making the security satisfy a realistic share of the debt. [Citation.] By choosing instead to bar a deficiency judgment after private sale, the Legislature achieved its purpose without denying the creditor his election of remedies.* If the creditor wishes a deficiency judgment, his sale is subject to statutory redemption rights. If he wishes a sale resulting in nonredeemable title, he must forego the right to a deficiency judgment. In either case the debtor is protected.

(*Cornelison, supra*, 15 Cal.3d at 602, quoting *Roseleaf, supra*, 59 Cal.2d at 43-44, emphasis added.)

Thus, the Legislature's purpose in enacting section 580d was to "mak[e] the security satisfy a realistic share of the debt" by protecting the borrower against foreclosure sale prices far below fair market value. If the lender wants a personal judgment against the borrower, the lender can elect judicial foreclosure and prove under section 726

that the foreclosure sale price reflects the fair market value of the property.

This Court has emphasized the importance of the anti-deficiency statutes by holding that they represent the public policy of the State and cannot be waived. In *DeBerard Properties v. Lim* (1999) 20 Cal.4th 659, the Court held that, because section 580b reflects a systemic public policy to protect the integrity of the real estate market, a borrower cannot waive the statute, even in a post-mortgage transaction for new consideration:

The explicit language of section 580b brooks no interpretation other than that deficiency judgments are prohibited by the purchase money mortgagee so long as a purchase money mortgage or deed of trust is in effect on the original property. *To allow a purchase money creditor to circumvent the absolute rule by enforcing a ... waiver of section 580b in exchange for other concessions would [flout] the very purpose of the rule....*

(*Id.* at 663, quoting *Palm v. Schilling*, 199 Cal.App.3d 63, 76 (1988), emphasis added.)

This Court has likewise held that section 580d expresses public policy and is unwaivable. (*Freedland v. Greco* (1955) 45 Cal.2d 462, 467-68; *see also Commonwealth Mortgage Assurance Co. v. Superior Court* (1989) 211 Cal.App.3d 508, 517.)

Because the Legislature enacted the anti-deficiency statutes to protect the public, not simply to reflect a preferred ordering of strictly private concerns, the courts have traditionally “exhibited a very hospitable attitude toward the legislative policy underlying the anti-deficiency legislation and have given it a broad and liberal construction that often goes beyond the narrow bounds of the statutory language. Moreover, the courts have been loath to accept any stratagem calculated to circumvent the social purposes attributed to the legislation by judicial construction.” (Riesefeld, *California Legislation Curbing Deficiency Judgments* (1960) 48 Cal. L.Rev. 705, 709-710, cited with approval in *Prunty v. Bank of America* (1974) 37 Cal.App.3d 430, 436 (“[W]e must also recognize that the ‘system’ [of anti-deficiency legislation] has been liberally construed to effectuate the specific legislative purpose behind it.”).)

2. This Court Should Approve the Heretofore Unquestioned Rule of *Simon*, that Section 580d Applies to a Second Mortgage When the Foreclosing Lender Holds Both First and Second Mortgages at the Time of a Non-Judicial Foreclosure.

a. Applying Section 580d to Black Sky’s Second Mortgage Is Consistent with *Roseleaf* and Necessary to Eliminate the Potential for a Double Recovery from the Cobbs.

Black Sky contends that after non-judicially foreclosing its first mortgage, it is entitled to sue the Cobbs for the unpaid balance of the second mortgage Black Sky also held against the same property. It

bases its argument almost entirely on this Court's opinion in *Roseleaf*, claiming "sold out junior" status.

In *Roseleaf*, this Court held that section 580d does not bar the holder of a second trust deed from seeking a money judgment against the borrower after a non-judicial foreclosure sale under the first trust deed fails to yield any recovery for the second. (*Roseleaf, supra*, 59 Cal.2d at 44.) The Court reasoned that section 580d allows the senior lender an election, either to proceed with a judicial foreclosure and obtain a deficiency judgment, with the foreclosure title remaining subject to the borrower's redemption right, or to proceed instead with non-judicial foreclosure and obtain an irredeemable title, while foregoing a deficiency judgment. (*Ibid.*) But a sold out junior has no opportunity for an election, and denying the junior a deficiency judgment would leave it remediless:

After a senior private sale, the junior has no right to redeem. This disparity of rights would be aggravated were he also denied a right to a deficiency judgment by section 580d. There is no purpose in denying the junior his single remedy after a senior private sale [*i.e.*, a deficiency judgment] while leaving him with two alternative remedies after a senior judicial sale [*i.e.*, either redemption after a senior judicial sale of the property or a deficiency judgment]. *The junior's right to*

recover should not be controlled by the whim of the senior, and there is no reason to extend the language of section 580d to reach that result.

(*Ibid.*, emphasis added.)

As the Cobbs' briefs emphasize, this case is distinguishable from *Roseleaf*. Unlike Black Sky, Roseleaf Corporation did not hold both the first and second trust deeds at the time of the foreclosure sale. Roseleaf only held the second, the first being owned by the unnamed "strangers to this action" who instituted the non-judicial foreclosure sale. (*Roseleaf, supra*, 59 Cal.2d at 38.) Their foreclosure sale wiped out Roseleaf's second trust deed.

Unlike Roseleaf Corporation, Black Sky was not an innocent third party bystander at the trustee's sale. Unlike Roseleaf, it was Black Sky that elected to conduct a non-judicial foreclosure. Its own sale wiped out its second trust deed. This materially distinguishes this case from *Roseleaf*, and should lead to a different result.

Roseleaf teaches that the Legislature's purpose in eliminating deficiency judgments after non-judicial foreclosure sales was to "mak[e] the security satisfy a realistic share of the debt" by undercutting the incentive of the foreclosing lender to underbid at a non-judicial sale, just as the right of redemption protects the borrower against underbidding at a judicial sale. If the lender is entitled to pursue a deficiency, the lender has a financial incentive to underbid at

a trustee's sale to maximize a deficiency judgment against the borrower. This creates the risk of "double recovery" the Legislature intended section 580d to eliminate.

In contrast with *Roseleaf*, Black Sky instituted the senior foreclosure sale *and* had an incentive to underbid at the sale in order to maximize the Cobbs' deficiency on the second. To the extent the foreclosure sale price was high enough to yield proceeds to pay any of Black Sky's second, Black Sky's deficiency would be correspondingly reduced. If, as Black Sky contends under *Roseleaf*, the anti-deficiency laws do not apply to its second deed of trust,⁶ then Black Sky would be able to pursue the Cobbs for a money judgment, not only free of the anti-deficiency bar of section 580d, but also without any limitation under the "fair value" statute, section 580a. (*Roseleaf, supra*, 59 Cal.2d at 39-41 (fair-value limitations of sections 580a and 726 do not apply to a sold out junior who recovers nothing from a senior trustee's sale).) Black Sky would be able to obtain a judgment against the Cobbs for the full balance of its second note, even if Black Sky had already once recovered some of that by taking title to the property at the trustee's sale.

⁶ "This action is not for a deficiency after the foreclosure on the senior loan; this action was filed to collect on the separate *junior* loan which was independently issued and recorded two years after the senior loan." (Answer Brief at 1, italics in original; *see also* pp. 11-12.)

Allowing Black Sky to pursue the Cobbs for a money judgment on the second, therefore, would authorize Black Sky to attempt to accomplish and/or to accomplish the very evil both *Roseleaf* and *Cornelison* teach the Legislature intended 580d to prevent—a double recovery.

b. The Language of Section 580d Allows Applying the Statute to Black Sky’s Second.

Black Sky responds that the language of section 580d is “clear and unambiguous” that its deficiency exemption only applies to the mortgage that is foreclosed at the trustee’s sale. (Answer Brief at 10-13.) Black Sky cites the statement in *Roseleaf* that “[Such] mortgage or deed of trust’ [in the statute] refers to the instrument securing the note sued upon. Thus section 580d *does not appear to extend* to a junior lienor whose security has been sold out in a senior sale.” (*Roseleaf, supra*, 59 Cal.2d 35 at 43, emphasis added; Answer Brief at 11-12.)

Even if this terse and tentative statement, made in passing and without any supporting analysis, were read as a judicial construction of the language of section 580d, *Roseleaf* is clear that the Court based its decision almost entirely on the statutory purpose of forcing a foreclosing lender to an election between judicial and non-judicial foreclosure. Both remedial alternatives contain built-in incentives to ensure that the sale would “mak[e] the security satisfy a realistic share

of the debt.” The Court found most persuasive that depriving the junior of any right to collect on a junior loan would create the judicial anomaly of leaving the junior remediless, “at the whim of the senior” and through no fault of its own.

Black Sky reports that after *Roseleaf*, the Legislature amended section 580d to replace “such deed of trust” in section 580d, subdivision (a), with “the deed of trust.” (Stats. 1989, ch. 698, § 13; see Answer Brief at 12.) *Roseleaf*, therefore, does not address the language of the post-1989 statute. Arguably, the change from “such” to “the” introduces ambiguity. “*Such* deed of trust” more clearly ties the trustee’s sale back to the “note secured by a deed of trust”—that is, the senior note. “*The* deed of trust” is less definitive because here, the property *was* “sold by the mortgagee or trustee [Black Sky] under power of sale contained in *the* mortgage or deed of trust.” “The” does not conclusively relate back to the mortgage or deed of trust that was foreclosed.

But even if it did, the application of section 580d should not rest on the potentially fortuitous choice of a single word, that the Legislature used “the,” instead of “a” or “such.” This Court appeared to recognize this in grounding its decision in *Roseleaf* on the statutory purpose, instead of the statutory language. Contrary to Black Sky’s textual argument, statutory construction principles do not bind this Court to focus on any single word, or to woodenly adopt a literal

interpretation that conflicts with the statutory purpose as found by this Court in its long-standing decisions in *Roseleaf* and *Cornelison*.

The “plain meaning rule”—that “if the statutory language is clear and unambiguous our inquiry ends”⁷—does not require a court to mechanically apply a “literal meaning” to a single word or phrase if doing so would be contrary to the legislative intent. “Literal” meaning is not “clear and unambiguous” if, when read in context, the literal meaning of words used by the Legislature do not comport with the intent of the legislation.

The intent of the Legislature is paramount. “Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

[T]he ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute. The meaning of a statute may not be determined from a single word or sentence; the words must be

⁷ Answer Brief at 10, quoting *Kirby v. Immooss Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1250.

construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible.

(Ibid.)

This Court applied these principles in *People v. Pieters* (1991) 52 Cal.3d 894. There, the “double base term limitation” of Penal Code section 1170.1a limited the maximum prison term in cases involving multiple sentences for drug sales to twice the number of years imposed as the base term under section 1170. Section 1170.1a contained express exceptions, none of which applied in *Pieters*. The trial court nevertheless imposed an eight-year sentence on the defendant, more than doubling his three-year base term based on “drug quantity enhancements” under section 11370.4. However, at the time defendant committed the crimes, the double base term limitation statute did not exempt quantity enhancements from its coverage.

The double base term statute was clear that “[t]he term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of [Penal Code] Section 1170,” subject to listed exceptions. (*Pieters, supra*, 52 Cal.3d 894, 897, fn.2.) However, the quantity enhancement statute was not added as an exception to the double base term statute until January 1, 1988, after defendant had sold cocaine to an undercover officer in July 1987. (*Id.*)

This Court nevertheless held that the double base term statute did not apply:

In order to determine this intent, we begin by examining the language of the statute. But ‘[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.’ Thus, ‘[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.’ Finally, we do not construe statutes in isolation, but rather read every statute ‘with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.’

(*Id.* at 898-99, citations omitted.)

Following these principles, this Court relied on the legislative purpose of the quantity enhancement statute to uphold the eight-year sentence, even though it was more than twice the base term, the literal language of the double base term statute did not exempt quantity enhancements, and the Legislature only later amended the double base term statute to exempt quantity enhancements:

In light of the broadly stated statutory objective of punishing more severely ‘those persons [dealing] in large quantities of narcotics,’ we do not believe the Legislature

intended full application of section 11370.4 [the quantity enhancement statute] to depend on the fortuitous availability of some unrelated exception [to the double base term statute]. Any other interpretation would draw a distinction, for instance, between large quantities of drugs possessed by an escaped felon and similar amounts in the hands of a convicted narcotics dealer. Such a distinction would be at odds with the Legislature's desire to punish dealers qua dealers.

(*Pieters, supra*, 52 Cal.3d at 901.)

This case presents considerations that *Roseleaf* had no occasion to analyze or decide.⁸ The Legislature's objective in enacting section 580d to "mak[e] the security satisfy a realistic share of the debt" and to prevent a foreclosing lender from realizing a double recovery can only be fulfilled if the statute is interpreted as applying to a second mortgage when a foreclosing lender holds both first and second mortgages at the time of the trustee's sale. By electing non-judicial foreclosure, the lender obtains a title free of any borrower redemption rights in exchange for foregoing any deficiency judgment. But the

⁸ Further, this Court "reconsiders its own decisions in shaping the law." (Answer Brief at 3, fn.5.)