

10-179 STERN V. MARSHALL

DECISION BELOW: 600 F.3d 1037

LOWER COURT CASE NUMBER: 02-56002, 02-56067

QUESTION PRESENTED:

In the 1984 Bankruptcy Act, Congress divided bankruptcy court jurisdiction into "core" proceedings, in which bankruptcy judges can enter final orders, and "non-core" proceedings that are subject to district court de novo review. See 28 U.S.C. §157(b). Congress expressly identified certain core proceedings, including "counterclaims by the estate against persons filing claims against the estate." §157(b)(2)(C). Despite Article III challenges, lower courts across the country have uniformly held for decades that bankruptcy courts can enter final orders on debtors' compulsory counterclaims to proofs of claim.¹ Until now.

The Ninth Circuit opinion here holds that under *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (*Marathon*) and *Katchen v. Landy*, 382 U.S. 323 (1966), core jurisdiction constitutionally exists under §157(b)(2)(C) only for compulsory counterclaims entirely encompassed within the allowance or disallowance of the creditor's claim against the estate and that raise no issue beyond that claim. Even though here the debtor's compulsory counterclaim constituted an affirmative defense to the proof of claim and, if decided first, would have defeated it entirely, the Court held the counterclaim was non-core because the debtor had to prove additional elements to prevail on it.

Accordingly, the questions presented are:

1. Whether the Ninth Circuit opinion, which renders §157(b)(2)(C) surplusage in light of §157(b)(2)(B), contravenes Congress' intent in enacting §157(b)(2)(C).
2. Whether Congress may, under Articles I and III, constitutionally authorize core jurisdiction over debtors' compulsory counterclaims to proofs of claim.
3. Whether the Ninth Circuit misapplied *Marathon* and *Katchen* and contravened this Court's post-*Marathon* precedent, creating a circuit split in the process, by holding that Congress cannot constitutionally authorize non-Article III bankruptcy judges to enter final judgment on all compulsory counterclaims to proofs of claim.
4. Where, as here, a creditor dismisses a state court claim against a debtor, files a proof of that claim in the bankruptcy and litigates the claim against the estate in

that forum, has the creditor consented to core jurisdiction over the debtor's compulsory counterclaim that encompasses an affirmative defense?

¹ A debtor's compulsory counterclaim to a proof of claim is any counterclaim that, at the time of pleading, arises out of the same transaction or occurrence as the creditor's claim against the estate and is not already pending in another action. Fed. R. Bankr. P. 7013; Fed. R. Civ. P. 13(a).

LIMITED TO QUESTIONS 1.2. AND 3

CERT. GRANTED 9/28/2010