No. 18-1113

IN THE UNITED STATES SUPREME COURT

JEFFREY G. THOMAS,
Petitioner,

v.

LAURIE ZELON, DENNIS PERLUSS, HUGH JOHN GIBSON, HOPE PARK LOFTS 2001-02910056 LLC, ROSARIO PERRY and NORMAN SOLOMON
Respondents.

On Appeal from the United States Court
Of Appeals for the Ninth Circuit
Case No. 17-55404,
The Honorable Milan Smith, Edward Leavy
and Morgan Christen, Panelists

PETITION FOR REHEARING OF THE WRIT OF CERTIORARI

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Petitioner In Propria Persona

QUESTION PRESENTED

Did the Ninth Federal Circuit Court of Appeals Err in Affirming the District Court's Dismissal of the federal civil rights complaint under the Rubric of *Rooker-Feldman* (*Rooker v. Fidelity Trust Co. (1923) 263 U. S. 413* and *District of Columbia Court of Appeals v. Feldman (1983) 460 U. S. 462*) because the Petitioner may amend the complaint to allege the denial of civil rights, privileges and immunities under the federal bankruptcy and taxation statutes, and the *Bankruptcy* and *Supremacy Clauses of the United States Constitution*?

TABLE OF CONTENTS

Question Presented i

Table of Contents ii

Table of Authorities iii

Citations to the Unofficial Reports vi

I. Statement of the Basis for Jurisdiction 1

II. Constitutional and Statutory Provisions 5

III. Statement of the Case 7

IV. Reasons for Granting the Writ 17

V. Conclusion 19

Certificate of Just Reasons and No Intent to Delay ... Post

TABLE OF AUTHORITIES

Constitution, Statutes and Rules

Amendment One of the United States Constitution 6, 8

Amendment Fourteen of the United States Constitution 15

Art. I, section 8 of the U. S. Constitution 2, 3, 5, 15

Art. VI, para. 2 of the U.S. Constitution 2, 3, 5, 15

26 U. S. C. §501(c)(3) 1, 9, 10

28 U.S.C. §1331 5

42 U.S.C. §1983 ..... 4, 15

U. S. Supreme Court Rule 44 1

Cal. Code Civ. Proc. §907 2

Decisions

Bianchi v. Rylersdaam (9th Cir. 2003) 334 F. 3d 895, (2004) cert. den. 540 U. S. 1213 17

Caperton v. A. T. Massey & Co. (2009) 556 U.S. 868 17

Codd v. Velger (1977) 429 U. S. 624 18

District of Columbia Court of Appeals v. Feldman (1983) 460 U. S. 462 ..... 4, 15, 17

Eastern Railroad Presidents Conference v. Noerr

Motor Freight, Inc. (1961) 365 U. S. 127 7

Golden State Transit Corp. v. Los Angeles
(1986) 475 U. S. 608 .....15, 17

Golden State Transit Corp. v. Los Angeles
(1990) 493 U. S. 103 .....15, 17

Grable & Sons Metal Products v. Darue
Engineering & Manufacturing
(2005) 545 U.S. 308 16

In re Benalcazar (Bank. N. D. Ill. 2002)
283 B.R. 514 .....13, 18

Kalb v. Feuerstein (1940) 308 U.S. 433 ..... 3, 12, 13

Moffat v. Moffat (1980) 27 Cal. 3d 645 18

Paul v. Davis (1976) 424 U. S. 693 18

Rooker v. Fidelity Trust Co.
(1923) 263 U. S. 413 ..... 4, 15, 17

Shorr v. Kind (1991) 1 Cal. App. 4th 249 ..... 12, 13

United Mine Workers v. Pennington
(1965) 381 U. S. 657 ..... 7, 8

Other

IRS Rev. Rul. 98-16 ..... 9, 16

References

A reference to *"Rooker-Feldman"* equals *Rooker v. Fidelity Trust Co. (1923) 263 U. S. 413* and *District of*

Columbia Court of Appeals v. Feldman (1983) 460 U. S. 462.

A reference to *"A"* followed by a number in the petition is a reference to page numbers in the accompanying Appendix.

CITATIONS TO THE UNOFFICIAL REPORTS

Decision of the Ninth Federal Circuit Court of Appeals, 715 Fed. Appx. 780, 2018 U.S. App. Lexis 7237, 2018 WL 1417235 ..... (see A1, Petition)

Amended Order Adopting Report & Recommendations of Magistrate Judge 2017 U.S. Dist. Lexis 20138 ..... (see A4, Petition)

Report & Recommendations of Magistrate Judge 2017 U.S. Dist. Lexis 20151 ..... (see A5, Petition)

I. STATEMENT OF THE RULE 44 BASIS FOR THIS PETITION FOR REHEARING

In February, the Clerk of this Court filed the petition for the writ of *certiorari* effective retroactively to December 13, 2018, and this Court denied the petition for the writ on April 29, 2019.

This Supreme Court's *Rule 44* requires that the Petitioner submit a statement of intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented in the petition. There are both (1) intervening circumstances of substantial or controlling effect, and (2) substantial grounds to present originally.

Since filing the petition, the second district court of appeals (B287017) the court of appeals assessed appellate sanctions against Petitioner in a related case in which he represented True Harmony *("True")*, the *Internal Revenue Code ("Code") Section 501(c)(3)* charity that in action no. BC546574 and appeal no.

B287017 challenged the Respondents' title to the Property in Los Angeles, California involved in B254143 and BC466413 that are the subject of this civil rights complaint herein. Petitioner has concurrently filed in this court a petition for the writ of certiorari to reverse the *"new"* sanctions orders.

With the denial of review by the supreme court of the state of appeal no. B287017 it is now very clear that the state courts have no redress at all for Petitioner and his client for certain privileges and immunities of citizenship secured by federal taxation and bankruptcy laws and the *Bankruptcy Clause* of *Art. I, section 8 of the U. S. Constitution*, which are supreme over state law under *Art. VI, para. 2 of the U.S. Constitution.* And it is now apparent as a result of the end of the appeal and denial of review and further sanctions under *Cal. Code Civ. Proc. §907* in B287017 that the state courts do not intend to correct their errors in holding state law to be

supreme to federal law, and not *vice versa* as the United States Constitution requires.

The state courts lacked jurisdiction to enter Respondents' judgment of title dated April 22, 2010 in action no. BC385560, because the only evidence in the trial in that action was a prior judgment in a prior action awarding the Respondents *"ownership"* (not title) of the property and the transcript of a so-called *"summary judgment"* decided while the then titleholder was in bankruptcy and the automatic stay was violated by this so-called summary judgment. Under *Kalb v. Feuerstein (1940) 308 U.S. 433* a state court is without jurisdiction to enter a judgment that violates the automatic stay in bankruptcy, and this is federal law under the Bankruptcy Act, and the *Bankruptcy Clause* and *Supremacy Clause* in the Constitution.

The interpleader action No. BC466413 out of which the appeal arose that included the sanctions complained of here was begun with a fund in court

created out of the proceeds of Respondents' sale of their void title to the property. In the later action no. BC546574 (the subject of the concurrently filed petition) Petitioner and the charity alleged in the Second Amended Complaint and argued in the motion for reconsideration of the sustained demurrer that the judgment of title for Respondents in 2010 violated the automatic stay.

But Petitioner did not specifically allege in the civil rights complaint herein that the sanctions of the appeals court violated his civil rights arising under federal law under *42 U.S.C. §1983*. But the *Rooker-Feldman* affair does not apply to civil rights actions arising under federal laws or certain provisions of the U.S. Constitution as Petitioner may amend the complaint to allege. Therefore this Supreme Court must grant the writ, reverse the lower courts, and remand for amendment of the civil rights complaint to allege this

basis of federal question jurisdiction under *28 U.S.C. §1331*.

Petitioner also seeks to amend the complaint to add the charity as a plaintiff.

II. ADDITIONAL CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 8, clause 4 of the U. S. Constitution (Bankruptcy Clause):

"The Congress shall have Power . . . [t]o establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States . . . .").

Article VI, paragraph 2 of the U. S. Constitution (Supremacy Clause):

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law

of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Amendment One of the U. S. Constitution, Section One:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(This Amendment One was incorrectly copied stated in the petition).

See the petition for provisions of law not stated here.

III. STATEMENT OF THE CASE

This statement of the case incorporates the statement of the case in the petition. The state courts since 2004 have repeatedly denied all motions, requests , complaints, hearings that True Harmony *("True")* sought in its efforts to retain title and after title was deeded to 1130 South Hope Street Investment Associates LLC, in its efforts to compel Respondents to pay damages for taking its property from it.

But the reason for this phenomenon is that the state courts refused to accept that solely federal law applied to important issues in the disputes between True and the Respondents, and the federal law required the title to the property to remain in True. And all of Respondents' pleadings, motions, arbitrations and complaints which refused to acknowledge that federal law was the only rule of decision for certain issues in the disputes between True and Respondents were sham baseless petitions under the *Noerr-Pennington* doctrine

of *Amendment One* of the *U. S. Constitution* [*Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc. (1961) 365 U.S. 127, 135; United Mine Workers v. Pennington (1965) 381 U.S.657, 670*].

The statement of the case included in the petition explained the representation of the charity by Respondent Rosario Perry, Esq. in a quiet title and specific performance lawsuit, the fraud on the court involved in Respondent's offer of a fake settlement agreement between True and Respondent Solomon in the lawsuit, the continuing conflicts of Respondent Perry in falsely testifying to the *bona fides* of the settlement agreement and becoming the *"manager"* of a *"new"* joint venture of Respondents with the charity, and the unconsented to conflict of interest of Perry as True's attorney at law involved in testifying against True in regard to the signatures on the settlement agreement and in doing business with True as manager of the *"new"* joint venture.

As the so-called manager of the joint venture, Respondent PERRY initiated several arbitration hearings, and the outcome of one arbitration hearing was a ruling the settlement agreement split the ownership of the property fifty percent – fifty percent (50% - 50%) between True and Hope Park. But federal tax law requires that a joint venture of for-profit entity with a registered public charity (under *Internal Revenue Code §501(c)(3)*) allow the charity to control it. *Rev. Rul. 98-16.*

In 2007, in *no. B183928, Hope Park Lofts LLC v. True Harmony, Inc. (sic),* the second district court of appeals expressly rejected True's defense that *IRS Revenue Ruling 98-16* required the charity to have control of the joint venture with Solomon's Hope Park Lofts LLC *("Hope Park")* called 1130 South Hope Street Investment Associates LLC (herein *"South"*). And a 50% split of control between the joint venturers conflicts with

the purpose of Code *§501(c)(3)*, and the Code preempts this result.

There seems to be no other ruling of any court in the United States that rejects the requirement of 51% control of a joint venture with a for profit entity by the charity. This ruling of the court of appeals violated the *Equal Protection of the Laws, Class of One* for True. As to the intent of the second district court of appeals to harm True, there was a lead opinion, and two so-called *"concurring"* opinions. But one concurring justice objected that the notice of appeal did not challenge the legality of the agreement, and the second concurring objected that the court of appeals could not accept the trial court's finding of jurisdiction of a motion to reconsider the announced verdict and to enforce the fake agreement.

The petition explained how in 2008 the officers of True dissolved South and Hope Park and caused True to transfer title to the Property to a new 1130 South Hope

Street Investment Associates LLC *("Delaware South")*. It explained that Respondent Perry caused California South (which was dissolved!) to sue Delaware South in action no. BC385560, which went to arbitration in January of 2009 that True did not attend because of insufficient prior notice to prepare for the hearing. The arbitrator ruled that California South had not been dissolved and it was owner of the Property, and awarded damages and attorneys' fees to Respondents of approximately One Million Dollars ($1,000,000).

Delaware South filed a petition in bankruptcy. The state court judge in no. BC385560, the Hon John Kronstadt, granted a motion of summary judgment for Respondents based on the arbitration award, and deferred entry of the judgment because of the automatic stay in bankruptcy.

Respondents obtained a non-retroactive order from the bankruptcy court lifting the automatic stay. At the trial of action no. BC385560, on March 15, 2010 the

judge John Kronstadt refused a continuance for True's attorney to prepare for trial and True's newly engaged attorney declined the engagement. The judge ordered True, a nonprofit public benefit corporation, to stand trial without presenting any evidence to the court.

At this so-called *"trial,"* the court accepted two documents from Respondent PERRY as evidence: the second amended judgment dated August 17, 2005 in action no. BC244718 and Perry's verbal regurgitation of the transcript of the summary judgment to the court. The judge, the Hon. John Kronstadt presiding, signed a judgment on April 22, 2010, despite that under bankruptcy law as interpreted in *Shorr v. Kind (1991) 1 Cal. App. 4th 249*, the state court's actions that affect title to real property in violation of the automatic stay are void.

Under *Kalb v. Feuerstein (1940) 308 U.S. 433*, the federal bankruptcy law denies jurisdiction of the state courts to do actions that violate the automatic stay

in bankruptcy. Furthermore, the federal bankruptcy law denies jurisdiction to state court to apply *collateral estoppel* and/or *res judicata* to judgments entered by state courts in violation of the automatic stay. *In re Benalcazar (Bank. N. D. Ill. 2002) 283 B.R. 514.*

Thus the title to the Property derived from the judgment of the court entered on April 22, 2010 was void, because it was entered without the jurisdiction of the state court. *Kalb, supra; Shorr, supra.* And the sale of the property in escrow to BIHMF, LLC without the title that the judgment dated April 22, 2010 supposedly vested in South, the seller, was a fraud and the fund deposited by Respondents in the court for the fake interpleader action no. BC466413 was a fraud on the court that failed to establish jurisdiction of the court over the interpleader as a result of the conclusion of federal bankruptcy law that Respondents did not have title to the property. And Respondents effectively denied all discovery of the escrow documents to Petitioner

representing Mr. Haiem in case no. BC466413, thus further denying due process of the laws to Petitioner, Mr. Haiem and the charity, and extending the discovery period for Petitioner, the charity and Mr. Haiem for this fraud on the court.

The state courts refused to hear any of this information regarding the void title to the Property in the judgment dated April 22, 2010 in action no. BC546574 and this Court will read the facts in the concurrently filed petition for writ of certiorari. Furthermore in hearing the demurrer to True's Second Amended Complaint based on *collateral estoppel* and *res judicata*, the court denied due process of the laws to argue the void character of the judgment of title entered on April 22, 2010 because of the violation of the automatic stay in bankruptcy (which the Second Amended Complaint alleged anyway). This is because the court *sua sponte* without prior warning to Petitioner or the charity judicially noticed the contents of the

judgments in action no. BC385560. And since the court of appeals dismissed the charity's appeal for untimeliness, neither the charity nor the Petitioner has had the opportunity to challenge the void judgment of title that violated the automatic stay in bankruptcy.

The Petitioner (and True) are entitled to reversal herein of the district court's order dismissing this civil rights action based on the *Rooker-Feldman* defense because they may plead that Respondents violated their federal civil rights under *42 U.S.C. §1983* arising under federal statutes such as the Bankruptcy Act of 1978 and the Code, and the Bankruptcy Clause and Supremacy Clause of the Constitution in addition to due process of the laws under Amendment Fourteen. *Golden State Transit Corp. v. Los Angeles (1986) 475 U. S. 608 (Golden State I); see Golden State Transit Corp. v. Los Angeles (1990) 493 U. S. 103 (Golden State II).* *Rooker-Feldman* does not apply to civil rights actions arising under federal law.

The complaint may be amended for both the Petitioner and True to seek equitable and legal remedies under civil rights arising under federal law. Reversal of these errors made by the state court as to federal law of bankruptcy will result in a decree of title restored to True, and damages to boot. The mistake made by the court of appeals in mis-interpreting *Rev. Rul. 98-16* is a possible ground of federal jurisdiction under *Grable & Sons Metal Products v. Darue Engineering & Manufacturing (2005) 545 U.S. 308.*

The Hon. John Kronstadt who presided over the dismissal of this civil rights complaint in the district court had a potential conflict of interest because he presided over the so-called trial in the state court in action no. BC385560 in which the court entered judgment in violation of the automatic stay in bankruptcy. The judgment dated April 22, 2010 incorporated verbatim a summary judgment granted by Hon. Judge Kronstadt and held in abeyance during the

bankruptcy of Delaware South, which summary judgment incorporated the arbitration award of January, 2009. The failure to recuse himself appeared to be improper. *Caperton v. A. T. Massey & Co. (2009) 556 U.S. 868.*

The comments of Judge Betty Fletcher in her concurring opinion in *Bianchi v. Rylersdaam (9th Cir. 2003) 334 F. 3d 895, (2004) cert. den. 540 U. S. 1213* are apposite. She stated that the Supreme Court has never applied the *Rooker-Feldman* affair to allegations of judicial bias, and she suggested reformulating the *Rooker-Feldman* doctrine to guard against its misuse to harbor judicial bias.

IV. REASONS FOR GRANTING THE WRIT

This Petition for Rehearing presents an issue of national importance, because of the conflict between the federal law which creates exclusive federal authority for the result from violations of the automatic stay in bankruptcy, and results under state law which varies and

the state courts don't recognize that they lack jurisdiction to apply state law. *Compare Moffat v. Moffat (1980) 27 Cal. 3d 645* with *In re Benalcazar, supra.* This Supreme Court must grant the writ and vacate and remand the action back to district court to continue the action under the uniform federal standards of violations of civil rights under *Golden State I, supra,* and *Golden State II, supra.*

Respondents' intent in threatening the suspension of Petitioner's license to practice law was, and is, to prevent him from investigating their torts and crimes in the theft of Property from True and their sale of Property. Respondents continue to threaten Petitioner with suspension of his law license. Respondents continue to defame Petitioner's character and cause loss of business and revenue from the occupation of practicing law, violating due process of the laws under *Codd v. Velger (1977) 429 U. S. 624; Paul v. Davis (1976) 424 U. S. 693.*

V. CONCLUSION

This Supreme Court should grant this petition for rehearing of the writ of certiorari, and reverse the lower federal courts and remand the complaint to the federal district court to proceed with an amendment to the complaint to add True as a party plaintiff and to allege the bases for jurisdiction under the Civil Rights Act of 1871 as applied to *"the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,"* including federal statutory law.

Dated: June 6, 2019 JEFFREY G. THOMAS

/s/ Jeffrey G. Thomas

Petitioner

CERTIFICATE OF INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT AND SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED IN THE PETITION

I certify that this petition for rehearing is based on intervening circumstances of a substantial or controlling effect and substantial grounds not previously presented in the petition as expressed in section I of this petition for rehearing.

Dated: June 6, 2019

/s/ Jeffrey G. Thomas

Petitioner