No. 18-___

In the
Supreme Court of the United States

_____ ◆ _____

Eldon Bugg
Petitioner

v.

Marc Honey et al.
Respondents

_____ ◆ _____

On Petition for a Writ of Certiorari from the Supreme Court of Missouri

_____ ◆ _____

Eldon Bugg
88 Pawnee Ln.
Boonville, MO 65233
660-882-9305
fax: (on req).
ebugg@sbcglobal.net
Pro se

QUESTIONS PRESENTED

Under bankruptcy law, *in personam* jurisdiction is national. *In re Federal Fountain*, 165 F.3d 600, 601, (8 Cir. 1999)(en banc)). ". . . physical presence alone constitutes due process. . .". Id., citing *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 110 S. Ct. 2105, 109 L. Ed. 2d 631, (1990). (Emphasis added). (Alternatively, "national jurisdiction" or "National Forum"). Arkansas and Missouri, are part of United States territory, are separate venues within the National Forum, and separate sovereign territories for purposes of diversity law.

Under national jurisdiction, Arkansas Respondents filed a fraudulent Chapter 13 bankruptcy in Arkansas injuring Petitioner in Missouri. Petitioner sued Respondents in Missouri state court alleging Missouri common-law torts. While the bankruptcy case was still open, Respondents appeared in the Missouri court, took affirmative actions, ultimately moved for dismissal on diversity grounds which was granted, was affirmed on appeal, and Petitioner's application to transfer to the Missouri Supreme Court was denied.

1. Did Respondents' appearance in Missouri, while the bankruptcy case was still open and they were still under national jurisdiction, constitute presence in Missouri (*Burnham*), for purposes of personal jurisdiction over nonresident defendants because Missouri is essentially just another venue in the National Forum?

2. Did Respondents' physical presence in United

States territory while prosecuting the bankruptcy case in Arkansas, constitute physical presence in Missouri (also in United States territory), for purposes of due process in the state lawsuit, thus empowering the Missouri state court to adjudicate the common-law tort claims? Particularly, given that bankruptcy law does not provide for litigating common-law torts? *Infra.*

3. Does the Fourteenth Amendment – and bankruptcy law – contemplate that Arkansas Respondents could invoke national jurisdiction to tortiously injure Petitioner in Missouri, and then invoke diversity jurisdiction to avoid answering for their tortious conduct in creditor's home state? Particularly, since bankruptcy law has no provision for adjudicating common-law torts? *Infra.*

Said Differently

Does the Fourteenth Amendment and bankruptcy law contemplate that after Arkansas Respondents invoked national jurisdiction to tortiously drag Missouri Petitioner into Arkansas Federal Venue to defend against the fraudulent bankruptcy claim, must injured Missouri Petitioner now have to drag himself back to Arkansas to obtain relief under Arkansas common law which may differ from Missouri common law?

PARTIES TO PROCEEDINGS

The Petitioner is a retired military veteran, an octogenarian, is domiciled in Missouri, and is acting on his own behalf.

Respondents are Cyril Gray the debtor below. Marc Honey, Wm. Marshall Hubbard, and Honey law firm P.A. were Mr. Gray's bankruptcy attorneys who are all domiciled in Arkansas.

TABLE OF CONTENTS

INDEX TO APPENDIX

AUTHORITIES

- Cases -

Statutes

OPINIONS BELOW

The court of appeals issued only a memorandum opinion which was not reported. It is reprinted in the Appendix. The order of the Missouri Supreme Court denying transfer of the appellate opinion is reprinted in the Appendix.

JURISDICTION

The judgment of the Missouri Appeals Court was entered on December 12, 2017. The Missouri Supreme Court order denying transfer was entered on April 3, 2018. The order of the Honorable Justice Gorsuch granting an extension to August 31, 2018 for filing the instant petition was entered on July 19, 2018. Jurisdiction is proper under 28 USC §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provision is the Fourteenth Amendment. Statutes are Title 11 (11 USC § 101 et seq.) which governs the bankruptcy process, 28 USC § 1334 which provides jurisdiction for all matters under Title 11, and 28 USC § 1452(a) which provides for removing common-law cases from state court to federal bankruptcy court.

STATEMENT OF THE CASE

This case presents an opportunity to definitively clarify the scope of National, personal jurisdiction where a bankruptcy debtor has filed a fraudulent bankruptcy which injured a creditor domiciled in another state. Although limited concurrent jurisdiction does exist between bankruptcy courts and state courts, bankruptcy is adjudicated almost exclusively by Article I federal bankruptcy courts as created by federal statutes. State courts are generally not proficient in the nuances of bankruptcy law; particularly jurisdiction law as evidenced by this case.

To illustrate, Petitioner summarizes the relevant procedural background which is set forth more fully in Petitioner's Application to Transfer to Missouri Supreme Court (A17 et seq.), and discussed in the Missouri appellate opinion (A1 et seq.).

- Respondents, Arkansas residents, filed a Chapt. 13 bankruptcy in Arkansas, fraudulently claimed an interest in property belonging to Petitioner (a Missouri resident), moved for contempt against Petitioner which was granted, and Petitioner appealed. Id.

- After the Eighth Circuit Court of Appeals reversed, Petitioner brought common-law tort claims against Respondents in

Missouri state court while the bankruptcy case was still open. Id.

- While the bankruptcy case was still open and national jurisdiction still attached to Petitioner and Respondents, Respondents appeared in the Missouri lawsuit *pro hac vice* and filed an adversarial proceeding under bankruptcy statute 28 USC §1452 to remove the state case to the Missouri bankruptcy venue. An adversary proceeding is a full-fledged lawsuit seeking affirmative relief the same as any other lawsuit. Id.

- While in the Missouri bankruptcy venue pursuant to said §1452 lawsuit, Respondents further sought affirmative relief by moving for change of venue back to the Arkansas Western District. Id.

- While in the Missouri bankruptcy venue, Respondents also fell into default for untimely pleading under bankruptcy rules. which attach in a removal under § 1452.

- The Missouri bankruptcy court remanded for lack of subject matter jurisdiction, and Respondents moved for dismissal for lack of personal jurisdiction which was granted and affirmed on appeal. Id.

- Among the findings, is that Hubbard, Honey, and Honey Law Firm P.A. were not parties to the bankruptcy and thus could not covered by the removal under § 1452.

- The state court ignored Hubbard, Honey, and Honey Law Firm P.A.'s unlawful participation in the § 1452 removal, all Respondents' use of federal bankruptcy jurisdiction, and all Respondents being in default when the case was remanded back to Missouri. Id.

Shown shortly below the state courts miscomprehended the unique nature of bankruptcy law; particularly national jurisdiction, and the fact that bankruptcy courts cannot adjudicate common-law torts.

In sum, this case presents an opportunity for the Court to clarify the scope of National personal jurisdiction in a bankruptcy case versus diversity jurisdiction; where common-law torts arise out of a bankruptcy case between citizens domiciled in separate states.

Clarification includes such issues as when state boundaries exist, when they do not exist, and how does a creditor injured under national jurisdiction obtain relief where bankruptcy law has no provision for adjudicating common-law torts?

Clarification is needed as to whether National personal jurisdiction or diversity jurisdiction attaches concurrently in such circumstances?

REASONS FOR GRANTING PETITION

This case is about personal jurisdiction. As used herein, the word "jurisdiction" standing alone will denote personal jurisdiction. Subject matter jurisdiction will be identified separately if needed.

The Court is presented with the opportunity: 1) to clarify the distinction between national jurisdiction and diversity jurisdiction, 2) to clarify the effect of national jurisdiction on the long-arm statutes of any state, 3) to clarify the jurisdictional effect of a bankruptcy removal under 28 USC § 1452, 4) to preserve the integrity and purpose of the bankruptcy regime, and 5) to prevent an unintended injustice inherent in existing federal legislation.

1. Clarify National Jurisdiction

For perspective, Petitioner reiterates that under bankruptcy law all residents of the United States are under national jurisdiction. *In re Federal Fountain; Burnham.* That equates to parties being residents of the National Forum as opposed to being diverse residents of separate

state forums. As Petitioner understands, there are 89 District Courts in the National Forum, each having attached thereto an adjunct bankruptcy court. Thus, in the National Forum there are 89 possible federal venues for purposes of bankruptcy. There are two national venues in Arkansas, and two in Missouri.

As seen in Statement of the Case, national jurisdiction attached to Petitioner and Respondents when the bankruptcy case was filed in the Arkansas Western District venue. This, even though the bankruptcy was fraudulent with respect to Petitioner, and constituted other common-law tort acts.

Accordingly, national jurisdiction was still attached when Petitioner brought his common-law tort claims in Missouri state court – which happens to be in the Missouri Western District venue. National jurisdiction was also attached when Respondents appeared in Missouri state court, and petitioned for removal under 28 USC § 1452. In addition, 28 USC § 1334 provides an element of concurrent bankruptcy jurisdiction to decide the question of removal under § 1452. (A7 ¶ second).

The inexorable conclusion is that Respondents not appeared in Missouri for purposes of due process, but they were also clothed in national

and concurrent jurisdiction (*Federal Fountain*, 28 USC § 1334). Clearly, due process was satisfied, the state court had personal jurisdiction over Respondents, and all three Missouri state courts erred.

Respectfully, there can be no disagreement that although state courts do share some concurrent jurisdiction with bankruptcy courts (§ 1334), they are not regularly called upon to adjudicate the sophisticated and complex nuances of bankruptcy law; particularly the concept of national jurisdiction. As seen by the Missouri appellate opinion (A1, et seq.) the state courts began in the mindset of diversity jurisdiction and thereafter essentially refashioned all of Petitioner's national-jurisdiction arguments so they would fit into the diversity-jurisdiction mold. The opportunity is now before this Honorable Court to definitively clarify national jurisdiction versus diversity jurisdiction in the context of bankruptcy law. The instant case presents unique questions when viewed from other perspectives as well.

For example, since national jurisdiction attached to Respondents when they instigated the fraudulent bankruptcy and contempt action, did said national jurisdiction remain attached to Respondents when Petitioner sought relief in Missouri state court? If not, when did national jurisdiction abate, or detach, and by what process

of law? Particularly given the fact that the bankruptcy case was still open at the time. I.e., Respondents were standing on U.S. territory – and in a National Forum – when they appeared in the Missouri state court. Has bankruptcy law left a gap? (See Integrity of Bankruptcy Regime *infra.* Also, Petitioner's argument that state courts are extensions of the National Forum *infra*).

Given that the tort injury occurred under the mantle of national jurisdiction, said jurisdiction should survive until the tort-relief process ends either by separate suit in state court at common law, or until it becomes time limited which ever occurs first.

Given that bankruptcy courts cannot adjudicate common-law torts, then state courts are effectively coextensive venues for obtaining relief from common-law injuries. (See more Legislative limitations *infra*).

Further analytical scrutiny is required of the bankruptcy process as well. E.g., once national jurisdiction has attached to a bankruptcy, it survives even after the bankruptcy estate is closed. This is because any party to a bankruptcy – regardless of their residency – can reopen the bankruptcy case for further administration of matters in the original bankruptcy case or assets and matters discovered after the bankruptcy case

is closed. Unresolved common-law torts should fall into that category. Indeed, such torts could be discovered after a bankruptcy case is closed.

The doctrines of relating back, unclean hands, and illegality can also augur analytically in favor of national jurisdiction surviving over tort injuries.

Finally, there is the situs-of-injury doctrine which generally determines the venue for seeking relief. Here, the situs of the injury was on U.S. territory, but within venue boundaries of Missouri as part of the National Forum. Accordingly, Petitioner sought relief in the Missouri venue – albeit a state court venue, rather than a federal district venue. Given the concurrent jurisdiction shared by federal and state courts, and the fact that Title I courts cannot adjudicate common-law torts; then logic, comity, substantial justice, and the overall purposes of the bankruptcy regime (*infra*), mandates that state courts be co-extensive forums for adjudicating common-law torts arising out of a bankruptcy case.

2. Missouri's Long Arm Statute

A definitive clarification of national jurisdiction would aid in resolving issues involving the long-arm statutes enacted by states when dealing with bankruptcy cases whether precisely on point with

the instant circumstances or otherwise. Aside from arguing national jurisdiction below, Petitioner alternatively argued that his common-law tort claims satisfied the minimum contacts provided in Missouri's long-arm statute § 506.500 RSMo. (A12 et seq.).

The appeals court did not dispute Petitioner's allegations and proof that Respondents filed the fraudulent bankruptcy, the contempt action, and served 450 plus documents on Petitioner in Missouri. Id. Notwithstanding, the appeals court applied the minimum contacts of the Fourteenth Amendment to determine personal jurisdiction and concluded that Respondents' actions "all happened in Arkansas". (A15). As such, Respondents did not have the requisite minimum contacts with Missouri to satisfy due process – so the court's finding went.

The appellate conclusion was quintessential diversity. The appeals court failed to comprehend that when the fraudulent bankruptcy was filed, and the 450 documents served, that Respondents and Petitioner were standing side-by-side on U.S. territory. Allegorically, Respondents stood next to Petitioner and poked him directly in the eye under the mantle of national jurisdiction. When Petitioner cried "foul", Respondents hoisted the flag of diversity jurisdiction. Absent the definitive clarification of national jurisdiction which

Petitioner is now asking, the state appeals court just sailed toward that flag.

Worse yet, the Missouri Supreme Court declined to review the matter in spite of fifteen (15) references to national jurisdiction in Petitioner's application for transfer. (A17 et seq.). Specifically, Petitioner's statement that:

> "As a matter of first impression in Missouri, the questions of general interest and importance are personal jurisdiction under the Fourteenth Amendment of the U.S. Constitution and Missouri's long-arm statute (§ 506.500), within the context of federal bankruptcy law's national jurisdiction. Amendment XIV and § 506.500 must be reexamined in light of the Bankruptcy Amendments and Federal Judgeship Act of 1984; Public Law 98-353. ('1984 Bankruptcy Act'). The appeals court grossly misapplied each of these laws, and abrogated its constitutional duty to follow this Court's controlling decisions in *Bryant v. Smith Interior Design Grp., Inc.,* 310 S.W.3d 227, 231 (Mo. 2010), *Craig v. Mo. Dep't of Health*, 80 S.W.3d 457, 459 (Mo. 2002); and

> controlling decisions of federal bankruptcy courts because there is no bankruptcy counterpart in Missouri law". (A17). (Emphasis added).

3. Removal Under 28 USC § 1452

Clarifying the distinction between national jurisdiction in bankruptcy and ordinary diversity jurisdiction would help state courts in other ways. Here, for example, the appeals court acknowledged Petitioner's argument that a removal under §1452 constituted a separate lawsuit bringing Respondents under the personal jurisdiction of the Missouri state court. (A7-A10). Notwithstanding the court's express acknowledgment of the argument, it quickly stated that:

> "Bugg cites no authority in support of his contention that removal to federal court pursuant to §1332 (Diversity of citizenship) is different from removal pursuant to § 1452 (Removal of claims related to bankruptcy cases) with respect to consenting to personal jurisdiction. We note that §1452 allows removal to federal district court if the district court has jurisdiction

> pursuant to § 1334. Both § 1334 and §1332 fall under Chapter 85 of the United State Code: District Courts; Jurisdiction. They set out alternate methods through which federal district courts have original jurisdiction". (A9).
> (Emphasis added).

Of course the appellate statement is erroneous on its face for several reasons. First, the reference to § 1332 in conjunction with § 1452 shows appellate confusion because the former governs jurisdiction, whereas the latter governs bankruptcy removal – irrespective of § 1332. Diversity cases are removed under 28 USCS § 1441, not § 1332. Moreover, a § 1441 removal is not a separate lawsuit like § 1452. This confusion evidences state-courts' lack of proficiency in bankruptcy matters.

Second, Petitioner did site authority that an adversary hearing under § 1452 was a separate lawsuit. (See specific citations at A36; see also *In re Roberts* 570 B.R. 532 (BR S.D. MS, 2017) and cases cited therein)). Third, the appellate comparison of § 1334 and §1332 epitomizes the crux of the matter. Although the appeals court was correct that both set out alternate methods through which federal district courts have original

jurisdiction bankruptcy jurisdiction, it is clear that § 1334 is vastly broader and more complex than general jurisdiction under § 1332. Among the complexities is national jurisdiction which the state courts failed to comprehend.

The remedy for such miscomprehension is, of course, a definitive clarification by this Court of the unique nature of national bankruptcy jurisdiction including the unique purpose and process of a §1452 removal. State courts need a specific precedential light to guide them through the fog.

4. Integrity of Bankruptcy Regime

The principal purpose of the Bankruptcy Code is to grant a "fresh start" to the "**honest** but unfortunate debtor". *Marrama v. Citizens Bank* , 549 U.S. 365, S. Ct. 1105, 166 L. Ed. 2d 956, (2007); *Sanchez v. Northwest Airlines, Inc.,* 659 F.3d 671, (8th Cir. 2011). (Emphasis added). In granting the fresh start, Article I bankruptcy court's are limited to restructuring the debtor / creditor relationship through their equity jurisdiction. Article I courts, cannot adjudicate common-law torts. *Medallic Art Co., LLC v. Calvert (In re Northwest Terr. Mint, LLC),* LEXIS 20068, 2017 WL 568821 (D.C. W.D. WA, 2017); citing *Stern v. Marshall,* 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475, (2011). In short,

bankruptcy court's exist to strike an equitable balance between **honest** debtors and their creditors.

A key discussion in *Stern* was the limitation of Article I courts because they are statutory rather than constitutional. Petitioner respectfully asserts that such limitation is relevant here. Specifically, as reiterated, Article I courts cannot grant relief to a creditor who has been tortiously injured in a bankruptcy case. This is due, in part, to the Legislature having to limit Article I courts to equity matters. For these reasons, the injured party must seek relief in the state court, or in federal district court. Unfortunately – as here – there is no guarantee the state court will correctly apply national jurisdiction.

The short of the matter is that the Legislature has essentially left a gap in the bankruptcy system. Limited to its equity powers, Article I courts cannot grant full relief where a "dishonest" debtor tortiously injures a creditor. Allegorically speaking, injured creditors are put off the bus short of the stop. Since the Legislature cannot empower an Article I court to grant tort relief, the courts must close the gap. A precedent here would be a good start.

The case at bar is a perfect example. Here, Respondents were not "honest but unfortunate

debtor[s]" with respect to Petitioner. Instead, they combined to use bankruptcy to perpetrate a fraud on Petitioner and instigated a contempt action in furtherance of the fraud. (Stmt. of Case. *supra*).

Absent recourse in the bankruptcy courts, Petitioner sought relief in Missouri state court. Absent on-point federal caselaw clarifying the scope of national jurisdiction involving common-law torts, the Missouri courts erroneously supplanted national jurisdiction with diversity jurisdiction.

The resolution is that this Honorable Court close the gap by clarifying that where a bankruptcy debtor in one state is clothed in the mantle of national jurisdiction when committing tortious acts against a creditor in another state, the national jurisdiction survives the bankruptcy action and extends to the state court action where injured creditor is seeking relief. This is necessary because Article I courts cannot grant such relief which effectively leaves creditors at the mercy of dishonest debtors. Applied here, since Respondents were residents of the United States domiciled in Arkansas when they injured Petitioner – a resident of the United States domiciled in Missouri – then Respondents submitted to personal jurisdiction in the Missouri court under the rubric of national jurisdiction.

* * *

> Simply stated, given that Article I courts cannot grant relief for common-law torts, then obtaining relief in creditor's home-state court should be an extension of national jurisdiction.

* * *

The aforesaid purposes of bankruptcy cannot be served by having it both ways. That is, dishonest debtors in their own state cannot be allowed to avail themselves of national jurisdiction to tortiously injure a creditor in another state, and then claim the protection of diversity jurisdiction when sued in the injured creditor's home state. This is a serious flaw in the integrity of the bankruptcy regime because it allows a creditor to be twice injured. Although an unintended gap in the law, there is neither equity nor justice in such a regime. Moreover, dishonest tortfeasors faced with having to defend themselves in a creditors home state will deter and dissuade them from engaging in tortious conduct.

5. Grave Injustice in Federal Statutes.

The final reason for clarification of national jurisdiction is to prevent a grave injustice as illustrated by this case. Petitioner – an octogenarian – had to defend against the fraudulent bankruptcy and contempt action in

Arkansas. As the Missouri courts would have it, Petitioner will have to return to Arkansas to seek relief from the common-law torts. Petitioner respectfully asserts that such would be a grave injustice.

CONCLUSION

This petition is not about mere errors of fact or law by the state courts below; albeit errors were made. This case is about the need for a more definitive clarification as to the uniqueness of bankruptcy jurisdiction, and an inherent inequity in federal bankruptcy law whose avowed purpose is equity.

For all the aforesaid reasons, Petitioner respectfully asserts that this inequity can be resolved by a definitive clarification of national jurisdiction which would effectively make state courts extensions of bankruptcy courts for purposes of creditors obtaining relief from common-law tort injuries perpetrated in a bankruptcy. Thus, Petitioner prays that this Honorable Court grant his Petition for Writ of Certiorari to resolve these important issues.

RESPECTFULLY SUBMITTED;

/s/ E. Bugg
Eldon Bugg
88 Pawnee Ln.
Boonville,MO 65233
660-882-9305
ebugg@sbcglobal.net
pro se